

THE RAILWAY LABOR ACT OF 1926

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CHAPTER I

THE DEVELOPMENT OF FEDERAL RAILWAY LABOR LAW

For more than sixty-five years, the labor-management relationship in the railroad industry has been controlled, at least to some extent, by the legislative acts of Congress. Acting within the powers granted to it by the commerce clause of the Constitution, Congress has endeavored to develop procedures to be followed in railroad labor controversies which would preserve the flow of commerce and achieve an equitable settlement of these disputes. Existing legislation is the result of an almost continuous effort to fulfill this obligation and represents the culmination of a long and varied experience in dealing with a particular labor force in a specific industry.

Of course, the federal regulation of the labor-management relationship in the railroad industry has not been a thing apart. Rather it has been closely related to the general federal program for the regulation of the railroads, which began with the Act to Regulate Commerce, passed by Congress in 1887. This Act, and the many which followed it, resulted from conditions in the railroad industry which posed unusual problems for the people of this country.

The Need for Railroad Regulation

In response to the needs of the country for the development of an adequate transportation system, the railroads had not only been built but overbuilt in the quarter of a century prior to 1887. The system of governmental land grants to the railroads played a part in this development, and so did the speculative enthusiasm of the era and the willingness of investors to risk their savings in the wide open spaces of the west. As a result, railroads were built into undeveloped regions which were not likely to furnish a large and profitable volume of traffic for some years to come.

The construction companies which built the railroads were sometimes paid enormous fees which ran far beyond the actual costs of construction. When the same individuals were officers and directors of both the railroads and the construction companies, the result was to defraud innocent investors and the governments which had furnished assistance to the railroads. Irregularities were common in the financing of railroad operations and many purchasers of railroad stocks lost their savings.

Still more important were the abuses that sprang up in the actual operation of the railroads. Fixed costs made up a large part of the total costs of railroad operation and it was much more economical for a railroad to operate at or near capacity than at a fraction of capacity. On the other

hand, the total volume of traffic available was relatively small. This situation led to intense and even ruinous competition for traffic among the railroads. Any new business which could be obtained seemed desirable if it would pay the variable costs of carrying it and contribute anything to the heavy fixed costs.

Rates were often cut in an effort to divert traffic from other railroads, and personal and local discrimination was common. Personal discrimination occurred when railroads granted secret rates or rebates to individuals and companies, paid unduly high rentals for private cars or for the use of terminals and facilities owned by the shippers, paid commissions to individuals or firms for obtaining freight, or underbilled or underclassified the freight furnished by particular shippers.

Local discrimination occurred when localities subject to railroad competition, or competition with other forms of transportation, were given lower rates than noncompetitive points. In carrying goods from New York to Chicago, a railroad was likely to be in competition with several other railroads and low through rates would be established. However, the first railroad might be the only one to pass through Buffalo at the time, and high rates from New York to Buffalo would be the result. Indeed, the railroad might charge twice as much to carry a good to Buffalo as to carry it the much

longer distance to Chicago, unless water competition exercised a moderating influence.

When railroads competed strongly for traffic, the result was often some form of monopoly. One railroad would overcome and buy out the other in some cases. Or the two roads would come to see the error of their competitive ways and would reach some kind of collusive agreement with respect to rates and the sharing of traffic. In either case the result was a monopoly in the particular area and high rates for the shipping public.

As a result of all the conditions which have been described, a considerable amount of hostility toward the railroads came into being and there were loud complaints against "extortionate rates" and other railroad abuses. A number of organizations demanded legislation to curb the railroads and several states responded in due course. Many of these state laws were rather extreme, and it proved rather difficult for individual states to regulate the railroads effectively. In the end, therefore, federal regulation was deemed necessary.

The abuses which occurred in the railroad industry were important in connection with bringing the railroads under federal regulation, but it can hardly be thought that the continuation of regulation down to the present date has turned solely on the desire to prevent abuses. It has been

recognized that the railroad industry, while privately owned and operated, is "affected with a public interest" and is of great importance to shippers, travelers, and the general public, and not merely to the owners and operators. In a growing and expanding economy it is considered essential that the railroads be kept in continuous operation.

In regulating the railroads at such an early date, the federal government departed sharply from its previous policy with respect to private industry. At that time practically all industries and phases of economic activity were allowed to operate in their own ways under the influence of the "natural" force of competition and the government followed a "hands-off" policy rather strictly. However, it seemed that the railroads needed regulating and their regulation was unlikely to be effective at any level lower than that of the federal government.

This dissertation will be concerned not with railroad regulation in general but with the federal regulation and control of labor-management relations in the railroad industry. This latter activity did not depend primarily on the desire to prevent abuses in the railroad industry. Rather it stemmed from the recognition of the public nature of the industry, its great importance to the economic system as a whole, and the need for its continuous operation. In the years before the enactment of the first railroad labor

legislation in 1888, there was a great deal of unrest in the industry.

The railroad strikes of 1877, which affected the Pennsylvania, Baltimore and Ohio, and other railroads, are sometimes referred to as the first important manifestations of the growing power of labor. The wages of the workers had been reduced to offset the decline in traffic associated with the depression which began in 1873, the tonnage and length of freight trains had been increased, and other steps had been taken which antagonized the workers. In the strikes of 1877, violence occurred, property was destroyed, and armed conflicts which resulted in loss of life broke out between strikers and the troops which were trying to maintain order. It was not difficult to decide that such interruptions in the operation of the railroads and in the flow of commerce should not be allowed to recur and that some peaceful means for settling disputes between employers and employees in the railroad industry should be found.

Objectives in the Study of Railway Labor Legislation

In dealing with federal railway labor legislation, this study will try to accomplish several things. It will trace the development of federal railway labor law, concentrating attention on the Railway Labor Act as amended. It will examine the major judicial decisions which have been rendered in relation to this legislation. It will explain the methods,

policies, and experiences of the National Railroad Adjustment Board and the National Mediation Board. It will also provide a rather detailed account of recent railway labor disputes which have created national emergencies and which in some cases have resulted in the seizure of the railways by the federal government.

These studies will furnish some basis for evaluating the effectiveness of existing railway labor legislation in resolving the problems of the labor-management relationship. However, the task of evaluation will not be easy. It will be obvious that the Railway Labor Act and its agencies and procedures have functioned much less successfully in recent years than formerly. The difficulty will be to determine the extent to which the events which have occurred are the result of flaws or weaknesses in the law and its administration.

Periods of prosperity and depression, inflation and deflation, technological changes, the strong development of the labor movement in other industries, inter-union competition for power and prestige, the coming and passing of national emergencies, the characteristics and outlook of the political administration in control of the federal government, the rise of competing forms of transportation, and many other factors, are capable of affecting the bitterness of labor-management disputes in the railroad industry and the ease or difficulty with which they may be settled. How, then, can the

effectiveness of particular labor laws be assessed? Would it not be even more difficult to trace any effect of labor legislation on the general level of railway wages and on the competitive position and pricing policies of the railroad industry? In spite of all difficulties, however, this study will attempt some evaluation of the Railway Labor Act and its agencies and procedures, and it will make some suggestions for improvement.

In the present chapter, the development of federal railway labor legislation will be traced. Chapter II will deal with a number of judicial decisions affecting this legislation. Chapters III and IV will describe the methods, policies, and procedures of the National Railroad Adjustment Board and the National Mediation Board. Chapters V through IX will examine a number of the important labor-management controversies which have occurred in the railroad industry in the last twenty years, and Chapter X will contain conclusions and recommendations.

The Early Development of Federal Railway Labor Legislation

Congress began the consideration of methods and procedures for the settlement of railway labor disputes as early as 1882, but it was not until February 28, 1887, that a bill passed both the House and Senate.¹ This bill, which provided

¹49th Congress, H. R. 7479.

for a system of arbitration when requested by either party to a dispute, was vetoed by President Cleveland. As an alternative, the President proposed a permanent commission consisting of three members to be appointed by the President. The Commission was to have the power to investigate any dispute which threatened to interrupt interstate commerce. In the spring of 1888, a bill was introduced which incorporated the provisions of the vetoed bill as well as the desires of the President.² This bill became law on October 1, 1888 and is now known as the Arbitration Act of 1888.³

This first piece of legislation fell logically into two principal parts. The first five sections of the law provided for voluntary arbitration if a labor dispute threatened to interrupt interstate commerce. Either party could apply in writing for arbitration and, if the other accepted, each side was to appoint one representative and the two representatives so selected were to appoint a third. The award of the arbitration group was to be forwarded to the Commissioner of Labor for publication. The act made no provision for the enforcement of an award, for public opinion was relied upon to insure compliance.

The second major provision of the law was concerned

²50th Congress, H. R. 8665.

³25 Stat. 501 (1888).

with the creation of investigating committees. The President was empowered, at his discretion, to appoint committees to investigate disputes which might interrupt interstate commerce. Each committee was to be composed of three members. One was to be from the State where the dispute existed, one was to be the Commissioner of Labor, and the third member might be anyone desired by the President. The board was to investigate the causes of a given dispute, make recommendations for its settlement, and prepare a public report. The life of the commission ended with the publication of the report.

During the ten years in which this law was in effect, the arbitration provisions of the act were never used and the investigating committee authorized by the Act was used only in the Pullman strike of 1894. Although the Act of 1888 did not play an appreciable part in the settlement of disputes of that period, it was important in that some of its provisions were included in the legislation that followed.⁴

The Pullman strike of 1894 forcibly demonstrated the inadequacy of existing legislation to cope with railway labor problems, and, from that time until the passage of the Erdman Act, numerous bills were introduced in both the Senate and the House of Representatives as amendments to existing law or in

⁴This discussion of early legislation is based, in part, on the authoritative work by C. O. Fisher, Use of Federal Power in Settlement of Railway Disputes, Bulletin of the United States Bureau of Labor Statistics No. 303 (Washington: Government Printing Office, 1922).

the form of entirely new legislation.⁵ During this period, Congress attempted to develop legislation which would be acceptable to all parties concerned and it was not until June 1, 1898, at the time of the Spanish-American War, that a new law was enacted.

The Erdman Act was similar to the Act of 1888 in some respects, but it should be noted that this law applied only to disputes which involved railroads and those employees who actually operated trains in interstate commerce.⁶ The Act established procedures for mediation and conciliation while continuing the arbitration provisions of previous legislation. The provisions for an investigating committee were eliminated entirely. Under the new law, if a dispute threatened to interrupt commerce, the chairman of the Interstate Commerce Commission and the United States Commissioner of Labor, upon the application of either party to the controversy, were to offer their services and attempt to mediate the dispute. If this failed, they were to attempt to institute arbitration proceedings. The commissioners could not take action on their own initiative.

If the parties to the dispute agreed to arbitration, each side was to select one arbitrator and these two were to

⁵Ibid., pp. 20-24.

⁶30 Stat. 424 (1898).

select a third or neutral party. If they could not agree upon a third person within five days of their own appointment, the third party was to be named by the chairman of the Interstate Commerce Commission and the Commissioner of Labor.

The agreement to arbitrate, which was to be signed by both parties, contained provisions for the hearing and recording of the position of the parties. When the award was made, it and the records of the hearing which were subject to court review were to be filed with the Circuit Court of the United States in the district where the dispute occurred. Courts of equity were to enforce the award, but no individual was to be forced to continue his employment service against his will. Employees who were dissatisfied with the award were not to leave the service of an employer in less than three months without thirty days written notice, and an employer could not dismiss an employee without complying with the same limitation.

One additional important provision of the law was contained in section 10. Employers subject to the provisions of the act were forbidden to require an employee to submit to certain unjust terms of employment. An employer could not require an employee to contribute to any fund for social or charitable purposes or to agree not to become a union member. In addition, the employee could not be discriminated against for union membership and the employer was prohibited from

attempting in any way to prevent an employee from obtaining new employment in the event that he was discharged. This section of the law was invalidated within a short time by a court decision made on the ground that it was an invasion of personal liberty as well as an infringement upon the rights of property.⁷

During the fifteen years of its existence, the Erdman Act was used sixty-one times but it was applied only once during the first nine years of its life. Twenty-six cases were adjusted by mediation, ten by arbitration and mediation, and six by arbitration alone. Of the remaining nineteen cases, some were settled by the parties after mediation was requested and, in the others mediation was refused by one of the parties. There was never a repudiation of an award made by an arbitration board and only one award was appealed to the courts.⁸

It appears that the Erdman law was more successful than earlier legislation, but gradually opposition began to develop. It was objected that the number of arbitrators was too small, that the public should be represented on the arbitration board, that awards of the arbitration board should not be subject to court review, that the mediators should be given authority to take the initiative in the work of mediation,

⁷Adair v. United States, 208 U. S. 161.

⁸Fisher, op. cit., pp. 31-34.

and that other changes and modifications should be made in the law.⁹ This growing body of criticism culminated in the Newlands Act of 1913.

The Newlands Act, supported by both labor and management, was quickly approved by both the House and Senate, and became law after approval by President Wilson on July 15, 1913.¹⁰ This Act was not a piece of new legislation, but represented an attempt by Congress to amend and amplify existing legislation and to apply this legislation to new circumstances and conditions.

The application of the law was broadened to include all employees who were actually engaged in train operation or train service of any description and included all railroads other than street railways. The Act created an agency to be known as the United States Board of Mediation and Conciliation, which was to consist of not more than three members to be appointed by the President with the advice and approval of the Senate. The Board of Mediation and Conciliation was to extend its services upon the written request of either party and to attempt to obtain an equitable adjustment of those disputes which threatened to be detrimental to the public interest. The Board was also empowered to extend its mediatory services to the parties if, in its judgement, such action

⁹Ibid., pp. 35-47.

¹⁰38 Stat. 103, Part 1 (1913).

seemed desirable and it appeared that an interruption of commerce was imminent. In addition, if a dispute developed as to the meaning or the application of any labor agreement, either party might apply to the Board for an expression of opinion or interpretation which was to be rendered by the Board as quickly as practicable.

The arbitration provisions of the Erdman Act were continued in substantially the same form by the Newlands Act. If the dispute could not be settled through mediation and conciliation, the Board was to urge arbitration. If the parties agreed to arbitration, the agreement was to be signed by both groups and was to comply in form with the requirements of the Act. The arbitration board was to be composed of either three or six members. Each party to the dispute was to appoint its representative or representatives and those thus selected were to choose the remaining arbitrator or arbitrators. In the event that the neutral party or parties were not named within a maximum of fifteen days, they were to be chosen by the Board of Mediation and Conciliation. A majority of an arbitration board was competent to make a valid and binding award which could be set aside by the courts only for error of law apparent from the record. The boards thus created were given the power to invoke the aid of the United States courts to compel witnesses to attend hearings and testify or to produce the papers, documents, materials, or

agreements necessary to make an equitable award.

As was true under the Erdman Act, the arbitration provisions of the Newlands Act were not significant. The United States Board of Mediation and Conciliation served in seventy-one controversies up to June 30, 1917. Of these disputes, fifty-two were settled entirely by mediation, fourteen by mediation and arbitration, three by the parties to the dispute without the aid of mediators, one by act of Congress, and one was not settled before government operation of the railroads began at the close of the year.¹¹

The provisions of the Newlands Act were in effect until the Transportation Act of 1920 was enacted, but the statute was modified to some extent by the Adamson Law which was passed September 5, 1916.¹² As early as December, 1915, the railway brotherhoods stated publicly that they desired and would fight for the adoption of the eight-hour day and that the question could not be settled by arbitration. An offer of mediation made by the United States Board of Mediation and Conciliation was refused and a nation-wide strike was called to begin on September 4, 1916. In the meantime, the parties to the dispute were invited by President Wilson to confer with him and he proposed that the principle of the eight-hour day be accepted by the parties. The employees

¹¹Fisher, op. cit., pp. 49-56.

¹²39 Stat. 721, Part 1 (1916).

accepted the suggestion but the employers objected to granting the request without further investigation and study.

Since it appeared that a nation-wide strike was imminent unless the demand was granted, the President, on August 29, 1916, requested Congress to enact legislation immediately to prevent the threatened strike. Congress responded with the Adamson Law, which established the eight-hour day for rail employees and created a commission of three members which was to observe the effect of the legislation and report its findings to the President and Congress. The law became effective on January 1, 1917, but its provisions were not applied to all employees until the government took possession of the railroads on December 31, 1917.

The carriers, strongly opposed to this legislation, attacked its constitutionality and it was declared unconstitutional by a lower court.¹³ As a result, the brotherhoods again threatened to strike on March 17, 1917. The President in an effort to avert the strike, then appointed a mediation committee from the Council of National Defense which finally persuaded the carriers to inaugurate the new standard and apply it to train-service employees only. When government operation began, the basic eight-hour day was extended to all

¹³The statute was upheld by the Supreme Court in Wilson v. New, 243 U. S. 332 (1917).

classes of employees.¹⁴

During the period of government operation, the Director General of Railroads developed methods and procedures for the handling of disputes which largely supplanted existing legislation, although the United States Board of Mediation and Conciliation continued to exist. Favorable terms of employment were established through agreements executed by the railroad unions and the Director General, while disputes over the interpretation of agreements were handled by three bi-partisan adjustment boards. General Order No. 13 established an adjustment board to deal with controversies arising from the ranks of the four operating brotherhoods. General Order No. 29 created an adjustment board for machinists, boilermakers, and other unionized shop-labor, while General Order No. 53 authorized an adjustment board for telegraphers, switchmen, clerks, and maintenance-of-way employees.¹⁵ A specially created Railroad Wage Commission recommended, and the Director General ordered, general wage increases in 1918. As experience with the adjustment boards, which were developed as a war-time measure, was exceptionally favorable, the optional creation of similar boards constituted an important provision of the new legislation enacted by Congress upon

¹⁴For a detailed account of these developments see Fisher, op. cit., pp. 57-68.

¹⁵Ibid., pp. 69-75.

return of the railroads to private management.

Early in 1919, Congress began to consider various plans concerning the operation of the railroads in anticipation of peace with Germany and the automatic termination of Federal control of the railways following the declaration of peace. There were certain groups that favored continued Federal operation and control, but they were in the definite minority, and in 1920, Congress passed the Esch-Cummins bill, better known as the Transportation Act of 1920, which began a new phase of railroad regulation.¹⁶

Title III of this new legislation dealt with railway labor and attempted to incorporate those provisions from earlier legislation which past experience had indicated would be most successful. Under the new law, it was the duty of the carriers and of their employees to exert every reasonable effort and use every available means to settle their disputes either in conference or by direct negotiations. If a dispute could not be settled by the parties, it was to be referred to adjustment boards which could be established by agreement between any carrier or group of carriers and any group of employees. Any dispute involving grievances, rules, or working conditions was to be referred to these boards for hearing and decision.

¹⁶41 Stat. 456 (1920).

In addition to the boards of adjustment, a board to be known as the "Railroad Labor Board" was created. This board was composed of nine members, three members representing the employees, three members representing the employers, and three members representing the general public. All members of the board were to be appointed by the President subject to the consent of the Senate, but appointments to the labor and management groups were to be made from a list of not less than six nominees submitted by representatives of the carriers and of the employees.

The Railroad Labor Board was given exclusive jurisdiction over disputes as to wages and also was given the authority to decide any dispute regarding grievances, rules, or working conditions which the adjustment boards certified that they could not settle. The Board could, on its own initiative, take into consideration any dispute when it seemed necessary, even though it was being considered by one of the adjustment boards. In the event that a board of adjustment had not been organized under the optional provisions of the law, a dispute was to come before the Railroad Labor Board upon the written application of any carrier or any organization of employees, upon written petition from not less than one hundred unorganized employees, or upon the Board's own motion. A majority of five members was necessary for the Board to reach a competent decision. Decisions made by the

Board were not binding upon the parties and depended upon the strength of public opinion to obtain acceptance.

A rather novel provision of the law was the establishment of certain criteria which the Board was to consider "among other relevant circumstances" in reaching a decision as to "just and reasonable" wages. The Board was ordered to consider the scale of wages paid for similar work in other industries; the relationship between wages and the cost of living; the hazards of employment, and the degree of training, skill, and responsibility required; the character and regularity of employment; and finally, the inequalities in wages or of treatment which were the result of previous wage decisions or adjustments.

Title III of the Transportation Act of 1920 did not contain any provisions for mediation and conciliation. The mediation clauses of the Newlands Act were not repealed, but their usefulness was ended by a provision stating that the power of the United States Board of Mediation and Conciliation was not to extend to any controversy which might be heard by the newly created agencies. In addition, railway labor took the position that the Newlands Act was no longer applicable and that its provisions would not be utilized.¹⁷

The Railroad Labor Board came into existence during

¹⁷Fisher, op. cit., p. 85.

a very unstable period. Railway labor had been successful in achieving many of its demands during the period of government operation and it was intent upon preserving these gains and obtaining additional concessions from management. On the other hand, private management was anxious to reassert its control over the railroads under private operation and, if possible, return to the status which had existed before government operation began. These conflicting policies inevitably led to a large number of disputes, some of which were extremely complex in character. Within a very short time it was evident that the provisions of the law were inadequate to cope with the problems which the Railroad Labor Board faced. The Board was unable to stop the nation-wide strike of the railroad shop-men in 1922 and by 1926 the Board had virtually collapsed. Both management and labor elected to ignore the provisions of the law and a steadily increasing number of disputes were being settled by other means.

The Board's failure was a result of many factors, but certain major difficulties are apparent. The Act provided for the optional creation of boards of adjustment. The carriers insisted that local boards should be established while labor desired national boards, with the result that the adjustment boards contemplated by the law were never established and the Railway Labor Board was swamped by many minor cases. In addition, the decisions of the Board were not enforceable

in the courts and the pressure of public opinion was inadequate to effect compliance. As the Board did not receive the support of labor and management, there were numerous cases in which the orders of the Board were violated.

Still another difficulty arose from the partisan nature of the Board. Six of the nine members were definitely partisan and Mr. Ben W. Hooper, who served as Chairman of the Railroad Labor Board from 1922 to 1926, was frequently charged by labor with representing management in the deliberations of the body instead of representing the general public. Public statements and articles written by Mr. Hooper did little to refute these charges.¹⁸ As a result of these difficulties and the evident short-comings of existing legislation, Congress, as early as 1924, began the consideration of new legislation. The statute which resulted, The Railway Labor Act of 1926, together with subsequent amendments, constitutes the basis of our present machinery for the settlement of railway labor disputes.

¹⁸For an authoritative account of this period see H. D. Wolf, The Railroad Labor Board (Chicago: The University of Chicago Press, 1927). For other studies, see F. B. Ward, The United States Railroad Labor Board and Railway Labor Disputes (Dissertation: The University of Pennsylvania, 1929); J. F. Bridgeman, The Railway Labor Act, Its Genesis, Operation and Evaluation (Dissertation: The University of Pennsylvania, 1930); L. H. Carter, History of Railway Labor Legislation (Dissertation: The University of Virginia, 1930); and A. R. Marshall, The Federal Government and Labor Legislation (Dissertation: The University of Virginia, 1934).

The Railway Labor Act and Its Amendments

On February 28, 1924, a bill dealing with railway labor, which proposed certain changes in the existing procedures of arbitration and provided for the creation of national boards of adjustment, was submitted to the Senate. Extensive hearings were held on these proposals but the bill was never acted upon by Congress.¹⁹ Efforts to amend existing legislation continued, however, and three new bills were introduced in the 69th Congress, one in the Senate,²⁰ and two in the House of Representatives.²¹ One of the House bills, H. R. 9463, was introduced as the result of negotiations and conferences between representative committees of railroad

¹⁹See U. S. Congress, Senate, Arbitration Between Carriers and Employees, Hearings before a Sub-committee of the Committee on Interstate Commerce, U. S. Senate, 68th Cong., 1st Sess., on S. bill 2646 (Washington: Government Printing Office, 1924), and U. S. Congress, Senate, Arbitration Between Carriers and Employees, Report No. 779, to accompany S. bill 2646, U. S. Senate, 68th Cong., 1st Sess. (Washington: Government Printing Office, 1924).

²⁰See U. S. Congress, Senate, Railway Labor Act, Hearings before the Committee on Interstate Commerce, U. S. Senate, 69th Cong., 1st Sess., on S. bill 2306, Part I and Part 2 (Washington: Government Printing Office, 1926), and U. S. Congress, Senate, Report No. 222, to accompany S. bill 2306, U. S. Senate, 69th Cong., 1st Sess. (Washington: Government Printing Office, 1926).

²¹69th Congress, 1st Sess., H. R. 9463, and 69th Congress, 1st Sess., H. R. 7180. Also see U. S. Congress, House of Representatives, Railroad Labor Disputes, Hearings before the Committee on Interstate and Foreign Commerce, 69th Cong., 1st Sess., on H. R. 7180 (Washington: Government Printing Office, 1926).

presidents and railroad labor organization executives. The Association of Railway Executives and the officials of twenty railroad labor organizations endorsed this bill as representing the agreement of railway managements operating more than 80 per cent of existing railroad mileage and of labor organizations representing an overwhelming majority of the employees. After favorable reports from the Committee on Interstate and Foreign Commerce in the House of Representatives and from the Committee on Interstate Commerce in the Senate, the bill received the approval of both houses of Congress, and became law May 20, 1926.²²

Although no further changes were made in the law until 1934, proposals were made in both the House of Representatives and the Senate during 1932 to include common carriers by air within the scope of labor legislation applicable to the railroads.²³ However, the proposed legislation was not enacted

²²See U. S. Congress, House of Representatives, Railway Labor Disputes, Report No. 328, to accompany H. R. 9463, U. S. House of Representatives, 69th Cong., 1st Sess. (Washington: Government Printing Office, 1926), and U. S. Congress, Senate, Disposition of Disputes Between Carriers and Employees, Report No. 606, to accompany H. R. 9463, U. S. Senate, 69th Cong., 1st Sess. (Washington: Government Printing Office, 1926).

²³See U. S. Congress, House of Representatives, To Amend the Railway Labor Act, Hearings before the Committee on Interstate and Foreign Commerce, 72nd Cong., 1st Sess., on H. R. 11867 (Washington: Government Printing Office, 1932), and U. S. Congress, Senate, Amendment of Railway Labor Act, Report No. 713, to accompany S. 4565, U. S. Senate, 72nd Cong., 1st Sess. (Washington: Government Printing Office, 1932).

during that session of Congress.

In 1934, several new proposals were made to both Houses of Congress. In the Senate, a bill was introduced which had as its objective the abolition of the Mediation Board and the creation of a new board to be called the National Mediation Board.²⁴ It also provided for the creation of a "National Adjustment Board" which was to be divided into four divisions for the handling of certain types of disputes originating with specific groups of employees. Regional and system boards of adjustment could also be established if desired by the railroads and the employees.

At almost the same time, two bills were introduced in the House of Representatives. One of these bills proposed the creation of a "National Board of Adjustment" and gave the Federal Coordinator of Transportation power to enforce certain sections of the amended law.²⁵ The other bill, which was quite similar to the Senate bill just discussed, became

²⁴See U. S. Congress, Senate, To Amend the Railway Labor Act, Hearings before the Committee on Interstate Commerce, 73rd Cong., 2nd Sess., on S. 3266 (Washington: Government Printing Office, 1934), and U. S. Congress, Senate, Board to Settle Disputes Between Carriers and Their Employees, Report No. 1065, to accompany S. 3266, U. S. Senate, 73rd Cong., 2nd Sess. (Washington: Government Printing Office, 1934).

²⁵U. S. Congress, House of Representatives, Railway Labor Act Amendments, Hearings before the Committee on Interstate and Foreign Commerce, 73rd Cong., 2nd Sess., on H. R. 7650 (Washington: Government Printing Office, 1934).

law on June 21, 1934, with the approval of Congress.²⁶

This new legislation modified the basic procedures of the Railway Labor Act in two principal ways. The boards of adjustment to be created under the original act were abolished and the thirty-six member National Railroad Adjustment Board was established. This board was to be divided into four divisions, with each division assigned to consider specific types of disputes involving certain groups of employees. The Board of Mediation was replaced by the National Mediation Board, which was granted broader powers authorizing it to tender its services in disputes concerning wages, rules, or working conditions not adjusted by the parties.

No further changes were made in the Railway Labor Act until April 10, 1936, at which time Congress extended virtually all of the provisions of the Act to the air carriers.²⁷

²⁶ See U. S. Congress, House of Representatives, To Amend the Railway Labor Act Approved May 20, 1926, Hearings before the Committee on Rules, 73rd Cong., 2nd Sess., on H. R. 9861 (Washington: Government Printing Office, 1934), and U. S. Congress, House of Representatives, To Amend the Railway Labor Act of May 20, 1926, Report No. 1944, to accompany H. R. 9861, 73rd Cong., 2nd Sess. (Washington: Government Printing Office, 1934).

²⁷ See U. S. Congress, Senate, To Amend the Railway Labor Act to Cover Every Common Carrier by Air, Hearings before a Sub-committee of the Committee on Interstate Commerce, 74th Cong., 1st Sess., on S. 2496 (Washington: Government Printing Office, 1935), U. S. Congress, Senate, To Amend the Railway Labor Act, Report No. 895, to accompany S. 2496, 74th Cong., 1st Sess. (Washington: Government Printing Office, 1935), and U. S. Congress, House of Representatives, To Amend the Railway Labor Act, Report No. 2243, to accompany S. 2496,

The important exception was the mandatory creation of a national adjustment board for the handling of grievances and the interpretation of contracts. Such a board may be created if, in the judgement of the National Mediation Board, this becomes desirable.

No further changes of any importance were proposed or enacted in reference to railway labor legislation until 1950.²⁸ Early in that year, three separate bills were introduced in Congress, one in the House of Representatives, and two in the Senate. The House bill proposed that the Railway Labor Act be amended to authorize agreements providing for union membership as a condition of continued employment, and for the deduction of union dues, fees, or assessments by the carriers from the wages of the carriers' employees.²⁹ Of the two bills introduced in the Senate, one proposed that the Railway Labor

74th Cong., 2nd Sess. (Washington: Government Printing Office, 1936).

²⁸In 1946, a House bill proposed that the name of the National Mediation Board be changed to the National Carrier Mediation Board. See U. S. Congress, Senate, Labor Disputes Act of 1946, Hearings before a Sub-committee of the Committee on Education and Labor, 79th Cong., 2nd Sess., on H. R. 4908 (Washington: Government Printing Office, 1946).

²⁹See U. S. Congress, House of Representatives, Railway Labor Act Amendments, Hearings before the Committee on Interstate and Foreign Commerce, 81st Cong., 2nd Sess., on H. R. 7789 (Washington: Government Printing Office, 1950), and U. S. Congress, House of Representatives, Amending the Railway Labor Act, Report No. 2811, to accompany H. R. 7789, 81st Cong., 2nd Sess. (Washington: Government Printing Office, 1950).

Act be amended to prevent interference with the movement of interstate commerce by establishing a system of compulsory arbitration,³⁰ while the other contained virtually the same provisions as the House bill. This bill ultimately was approved by Congress and became law January 10, 1951, legalizing those labor agreements which provide for union membership as a condition of continued employment, and for the deduction of the usual union dues, fees, or assessments by the carriers from the wages of the employees on behalf of the labor organization concerned.³¹

Present railway labor legislation consists of the Railway Labor Act of 1926, which was the outgrowth of even earlier legislation, together with the modifications and amendments of 1934, 1936, and 1951. Existing law establishes

³⁰See U. S. Congress, Senate, To Prohibit Strikes and to Provide for Compulsory Arbitration in the Railroad Industry, Hearings before a Sub-committee of the Committee on Labor and Public Welfare, 81st Cong., 2nd Sess., on S. 3463 (Washington: Government Printing Office, 1950), and U. S. Congress, Senate, Amending the Railway Labor Act, as Amended, So as to Prevent Interference With the Movement of Interstate Commerce, Report No. 2445, to accompany S. 3463, 81st Cong., 2nd Sess. (Washington: Government Printing Office, 1950).

³¹See U. S. Congress, Senate, To Amend the Railway Labor Act . . . Providing for Union Membership and Agreements For Deduction from Wages of Carrier Employees for Certain Purposes, Hearings before a Sub-committee of the Committee on Labor and Public Welfare, 81st Cong., 2nd Sess., on S. 3295 (Washington: Government Printing Office, 1950), and U. S. Congress, Senate, Railway Labor Act Amendments, Report No. 2262, to accompany S. 3295, 81st Cong., 2nd Sess. (Washington: Government Printing Office, 1950).

elaborate and complex machinery for the settlement of railway disputes and no attempt will be made to analyze the statute in detail. However, it is worthwhile to consider the major provisions of existing legislation.

The Railway Labor Act as amended is divided into two sections: Title I contains the provisions applicable to the railways, while Title II extends the law to common carriers by air. Title I is divided into fourteen sections, some of which are not of great importance. Section 1 sets forth the scope and jurisdiction of the Act together with the definitions of certain terms and phrases which are used. The Act applies to any express company, sleeping-car company, or carrier by railroad subject to the Interstate Commerce Act, including any company which is directly or indirectly owned or controlled by any railroad carrier which provides a transportation service. Street, interurban, or suburban electric railways are specifically excluded unless such railways are operated as a portion of a general steam-railroad system of transportation.

Section 2 expresses the general purposes of the Act and outlines the duties and responsibilities of the carriers and of the employees under the law. It is the purpose of the Act:

(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association

among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

It is the duty of the carriers and of their employees "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions" and to settle all disputes "in conference between representatives" of the parties to the dispute "in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute." There may be no "interference, coercion, or influence" in the selection of the representatives in any dispute and the employees are guaranteed the right to organize and bargain collectively through representatives of their own choosing. The majority of any class or craft is competent to determine who shall be its representative. In case of a dispute concerning this matter the National Mediation Board must investigate and certify in writing to both parties the names of any individuals or organizations designated by the Board as the proper representatives of the employees. In addition, this section provides for union membership as a condition of continued employment as well as the deduction by the carriers for payment to the

labor organization from the wages of the union members any periodic dues, fees, or assessments uniformly required.

The National Railroad Adjustment Board is created under the terms of Section 3. The Adjustment Board consists of thirty-six members, eighteen of whom are selected by the carriers and eighteen by the labor organizations of the employees. The members of the Board are paid by the party or parties that they represent. Other expenses such as housing, staff, and the compensation of referees are paid by the Federal government. The Adjustment Board is divided into four divisions, the organization and proceedings of each division being separate and independent of the others. The first division has jurisdiction over disputes involving engineers, firemen, hostlers, conductors, trainmen, and yard-service employees. This division has ten members, five appointed by the carriers and five by the employee labor organizations. The second division has control over disputes involving machinists, boiler-makers, blacksmiths, sheet metal workers, electrical workers, car men, helpers, and apprentices of the foregoing, coach cleaners, powerhouse employees, and railroad shop laborers. There are ten members in this division, an equal number being selected by the carriers and the employees. All disputes involving station, tower, and telegraph employees; train dispatchers; maintenance-of-way men; clerical employees; freight handlers; express station and stores employees; signal

men; sleeping car conductors; sleeping car porters; maids and dining car employees are referred to the third division. This division also has ten members, five being selected by the carriers and five by the employees. The fourth division has jurisdiction over those disputes arising from the ranks of employees who are directly or indirectly engaged in the transportation of passengers or property by water. This division also has jurisdiction over all other employees who are excluded from the jurisdiction of the first, second, or third divisions. This division has only six members, three being appointed by the carriers and three by the employees.

It should be noted that the National Railroad Adjustment Board considers only those disputes which grow out of grievances or out of the interpretation or application of existing agreements concerning rates of pay, rules, or working conditions. If such a dispute arises, it is to be handled "in the usual manner up to and including the chief operating officer" of the carrier or carriers concerned. If the dispute is not settled at this level, it may be referred by petition by either or both parties to the appropriate division of the Adjustment Board, together with a full statement of the facts of the dispute. A majority vote of the division is necessary to make a final and binding award in a dispute. If the division deadlocks, it is its responsibility to select a neutral party, or "referee," to sit with it and make an

award. If the division cannot agree upon a neutral party, this fact is certified to the National Mediation Board and the board must appoint a neutral party within ten days.

The awards of the several divisions of the Adjustment Board must be made in writing and are enforceable in the District Courts of the United States. A two-year statute of limitations governs all court action under this section. The Adjustment Board maintains its headquarters in Chicago, Illinois, and any division with unfinished matters before it must continue in session until the altercations are settled. A final miscellaneous provision gives the Adjustment Board, at its own discretion, authority to establish regional adjustment boards to act in its stead at any time or place for a limited period. Such a board has all of the rights and powers of the parent board.³²

The National Mediation Board is created and given certain powers under the authority of Sections 4 and 5 of the statute. This Board is an independent agency in the executive branch of the government and is composed of three members. The members are appointed by the President with the advice and consent of the Senate, but not more than two members may be from the same political party. Salaries of the Board as well as the salaries of its staff are paid by the United States.

³²Recently, the first division has used this provision of the law in an effort to reduce its backlog of cases.

The functions of the National Mediation Board are extensive. One or both of the parties to a dispute may invoke the services of the Mediation Board when the dispute is in reference to changes in rates of pay, rules, or working conditions, or when the dispute is not referable to the National Railroad Adjustment Board and has not been adjusted by conferences between the parties. In addition, the Mediation Board may proffer its services when, in the judgement of the Board, a dispute threatens to become an emergency.

It is the responsibility of the Mediation Board to bring the parties to agreement by mediation, if possible, and to urge arbitration if all attempts at mediation fail. If arbitration is refused by one or both of the parties, the Board must notify the parties that mediation has failed and that no changes are to be made in reference to wages, rules, or working conditions for a period of not less than thirty days. An emergency board may be appointed under the provisions of Section 10 during this waiting period.

If arbitration is accepted, the National Mediation Board has certain duties under Sections 7 and 8 which establish the procedure for arbitration. Under the provisions of Section 7, a board of arbitration may be formed to consist of either three or six members. If it is a three-man board, labor and management each appoint one representative and if it is a six-man board each party selects two representatives.

The arbitrators thus appointed then select the remaining arbitrator or arbitrators. If agreement cannot be reached, the Mediation Board must perform this function.

The arbitration board is responsible for establishing its own procedure, but it must conform with certain detailed requirements of the Act. A majority of an arbitration board is necessary for a valid and binding decision and the award must be filed with a district or circuit court of the United States. If the award is not impeached within ten days, the court must enter judgement upon the award which then becomes final and binding upon the parties. If a petition for impeachment is filed, the court may entertain the impeachment only if it is shown that the award does not conform to the requirements of the Act, that the proceedings did not conform to the Act, that the award does not conform to the stipulations of the agreement to arbitrate, or that a member of the board of arbitration or a party to the arbitration practiced fraud or corruption which affected the result of the arbitration. The decision of the district court may be appealed to the circuit court of appeals and the decision of this court is final.

The remaining important provisions of the Act are found in Section 10. Under this section, if a dispute, in the judgement of the National Mediation Board, threatens to "substantially interrupt" interstate commerce, the Board must so notify the President, who, at his discretion, may create

an emergency board to investigate and report upon the dispute. The President may appoint anyone and any number of persons to the board, provided that the appointees do not have a financial interest in the carriers or labor organizations concerned. The board must submit a report to the President within thirty days from the date of its creation. During this period and for thirty days after the submission of the emergency board report, no change may be made by the parties as to the conditions from which the dispute arose, except by mutual agreement.

It is apparent from a consideration of the historical development of the Railway Labor Act that its procedures are the result of extensive experience during which Congress has been almost continuously concerned with their improvement. Congress has sought to develop a statute which would receive the full support of the parties concerned and would equitably resolve the controversies which almost inevitably develop from the labor-management relationship. There is no indication that Congress has unduly favored any of the parties subject to the statute and it would appear that the procedures of the Act for the peaceful settlement of disputes should be quite successful. Yet recent experience indicates that certain sections of the Railway Labor Act are no longer effective and that the procedures followed in the settlement of these controversies are in danger of collapse. Since the historical development of the statute does not offer an explanation for these difficulties, it is necessary to turn to other matters.

CHAPTER II

JUDICIAL INTERPRETATION OF FEDERAL RAILWAY LABOR LEGISLATION

As indicated in Chapter I, existing Federal railway legislation is the culmination of a long series of Congressional statutes. From time to time, these statutes have been subjected to review by the courts in order to determine their constitutionality, to review the powers exercised by the administrative agencies in their implementation of Congressional authority, and to protect the privileges and the properties of those persons and groups who are governed in certain of their activities by this legislation. It is the purpose of this chapter to discuss briefly the constitutional basis of present legislation, to examine certain of the powers and policies which have been utilized by the administrative agencies in fulfilling their duties and responsibilities under existing statutes, and to consider the manner in which judicial interpretation of this legislation has affected the ability of these agencies to execute the apparent intent of Congress.

The Constitutional Basis of Railway Labor Legislation

The power of the United States government to regulate labor-management relationships in the railroad industry has

been recognized for many years. Congress, under the powers and responsibilities set forth in the Constitution, has the authority "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Under this clause, Congress has the duty of safeguarding and protecting the free flow of commerce among the several States. It has the additional power to build and maintain post offices and post roads and to protect the public mails. Under its police powers, Congress may legislate to protect the health, safety, and welfare of the general public. These powers and responsibilities would appear to be sufficient to sustain the position that Congress has the power to regulate and control labor-management relationships in the railroad industry, and the courts have so held.

As early as 1824, in the case of *Gibbons v. Ogden*,¹ the Supreme Court explicitly stated that labor legislation came within the meaning of the phrase "to regulate commerce." The court held:²

Commerce, in its simplest significance, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation.

¹9 Wheaton 1.

²9 Wheaton 1, pp. 27-28.

Shipbuilding, the carrying trade, and propagation of seaman, are such vital agents of commercial prosperity, that the nation which could not legislate over these subjects, would not possess power to regulate commerce.

The powers of Congress to regulate interstate commerce and protect the mails were stated in a most forceful manner in the famous case In re Debs³ which was an outgrowth of the Pullman strike of 1894. Debs and other leaders in the strike had been enjoined from conspiring to do anything which would interfere with the carrying of the United States mails or with the movement of interstate commerce. They were found guilty of contempt of court for violating the injunction and a writ of habeas corpus was filed by them, alleging that the action of the Federal Government in stepping into the local dispute was in violation of the Constitution. The Supreme Court ruled against the applicants, thus sustaining government intervention. The court, in delivering its opinion, held:⁴

As, under the Constitution, power over interstate commerce and the transportation of the mails is vested in the national government, and Congress, by virtue of such grant has assumed actual and direct control, it follows that the national government may prevent any unlawful and forcible interference therewith

The entire strength of the Nation may be used to enforce in any part of the land the full and

³158 U. S. 564.

⁴158 U. S. 564, p. 581.

free exercise of all national powers, and the security of all rights intrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails

The national government, given by the Constitution power to regulate interstate commerce, has by express statute assumed such jurisdiction over such commerce when carried upon railroads. It is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers of a government to move obstructions from the highways under its control.

The constitutionality of the Railway Labor Act of 1926 was sustained by the Supreme Court of the United States in the case of Texas and New Orleans Railroad Co. v. Brotherhood of Railway Clerks and Steamship Clerks.⁵ In this case, the railway had established a company union which it contended was the proper representative of the employees. To the extent that the statute undertook to prevent either party from influencing the other in the selection of representatives, it was claimed that the statute was unconstitutional because it sought to take away those rights guaranteed by the First and Fifth Amendments to the Constitution. Chief Justice Hughes, in delivering the opinion of the court, stated:⁶

The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them.

⁵281 U. S. 548.

⁶281 U. S. 548, p. 571.

The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of employees in making their selections, they cannot complain of the statute on constitutional grounds.⁷

The amendments to the Railway Labor Act passed in 1934 were held to be constitutional by the Supreme Court in the case of Virginian Railway Co. v. System Federation No. 40, Railway Employees Department of the American Federation of Labor.⁸ The opinion of the court was delivered by Justice Stone. A pertinent portion of the ruling holds:⁹

The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders The Railway Labor Act . . . indicates clearly that its provisions are aimed at the settlement of industrial disputes by the promotion of collective bargaining between employers and the authorized representative of their employees, and by mediation and arbitration when such bargaining does not result in agreement. It was for Congress to make the choice of the means by which its objective of securing the uninterrupted service of interstate railroads was to be secured The

⁷The constitutional basis for legislation enacted in relation to railway employees is discussed in an article by L. J. Hassenauer, "Congressional Legislation Affecting Railroad Employees," Notre Dame Lawyer, VIII (May, 1933), pp. 429-450.

⁸300 U. S. 515.

⁹300 U. S. 515, p. 553.

means chosen are appropriate to the end sought and hence are within the Congressional power.¹⁰

Since 1937 the constitutionality of the Railway Labor Act has not been seriously questioned, but throughout the life of the Act important cases have served to clarify or interpret various provisions of the statute. These decisions have served to settle issues which arose to trouble the National Mediation Board and threatened to prevent the prompt and orderly settlement of various disputes.

Carriers Subject to the Railway Labor Act

Section I of the Railway Labor Act defines those carriers subject to the Act as including any express company, sleeping-car company, railroad, or any company which is directly or indirectly controlled by any railroad. However, the Act does not apply to any street, interurban, or suburban electric railway unless it is operated as part of a general steam-railroad system. This does not exclude any part of a general steam-railroad system operated by other means of motive power. The Interstate Commerce Commission is authorized, upon the request of the National Mediation Board or upon complaint of any interested party, to determine whether any line operated by electric power is subject to the Act.

¹⁰Constitutionality of the amendments of 1934 are discussed by F. C. Gause and E. A. Kightlinger, "The Railway Labor Act Decision," Indiana Law Journal, XII (June, 1937), pp. 403-415.

The Hudson and Manhattan Railroad Company, an electric railway operating between New York and New Jersey was found by the Interstate Commerce Commission to be an operating component of the Pennsylvania Railroad system and, therefore, subject to the Act. The district court and the circuit court of appeals both upheld the findings of the Interstate Commerce Commission and the carrier appealed to the Supreme Court. The appeal was denied by the Supreme Court and the ruling of the lower court thus became effective.¹¹ The court of appeals found that the findings of the Interstate Commerce Commission were to be upheld unless the determination of the Commission was arbitrary and capricious. Evidence submitted indicated that the Hudson and Manhattan Railroad Company did operate as a part of the Pennsylvania Railroad system and that the finding of the Interstate Commerce Commission was not arbitrary. Therefore, the carrier was subject to regulation under the Act and is now complying with its provisions.

In another case, Shields v. Utah Idaho Central Railroad Co.,¹² the Supreme Court settled the issue as to whether an electrically-operated carrier engaged in interstate commerce, but not part of a general system of steam transportation, was subject to the Act. The carrier contended that it was an

¹¹Hudson and M. R. Co. v. Hardy (Interstate Commerce Commission, Interveners), 103 F. 2d 327.

¹²305 U. S. 177.

interurban line but the Interstate Commerce Commission had found that it was not an interurban line and was subject to regulation.¹³ In rendering its decision, the Supreme Court sustained the findings of the Interstate Commerce Commission and reversed the rulings of the lower courts. There have been still other cases in which the courts have considered this question and the rulings in these cases concur in substance with those above.¹⁴

The Objectives of the Railway Labor Act

In Section 2 of the Railway Labor Act, Congress specifically stated the general purposes of the Act which were to be achieved through the methods and procedures incorporated in the law. At various times, the courts have delivered opinions which have restated the objectives of the Act, but they have not amplified or limited the apparent intent of Congress by their decisions.

In a leading case, Virginian Railway Co. v. System Federation No. 40, Railway Employees Department of the

¹³For the opinion of the Interstate Commerce Commission, see 214 I. C. C. 707. An interurban railway is defined in Piedmont and Northern Railway Co. v. Interstate Commerce Commission, 286 U. S. 299.

¹⁴For other cases see: Chicago, S. S. and S. B. R. R. v. Fleming (Interstate Commerce Commission, Intervener) 109 F. 2d 419; Burke v. Murphy, 109 F. 2d 572; and Brotherhood of Locomotive Firemen and Enginemen v. Interstate Commerce Commission, 147 F. 2d 312.

American Federation of Labor,¹⁵ the Supreme Court delivered the following opinion:¹⁶

The amended Railway Labor Act seeks to avoid interruptions of interstate commerce resulting from disputes concerning pay, rules or working conditions on the railroads, by the promotion of collective bargaining between the carrier and the authorized representative of its employees, and by mediation and arbitration when such bargaining does not result in agreement. To facilitate agreement, it gives to employees the right to organize and bargain collectively through a representative of their own selection, doing away with company interference and "company unions." The statute does not undertake to compel agreement between the employer and employees, but it does command those preliminary steps without which no agreement can be reached. It at least requires the employer to meet and confer with the authorized representative of its employees, to listen to their complaints, to make reasonable effort to compose differences--in short, to enter into a negotiation for the settlement of labor disputes such as is contemplated by Section 2.

Substantially the same ruling was given by a circuit court of appeals in Atlantic Coast Line R. Co. v. Pope:¹⁷

The Act was passed to secure the prompt and orderly settlement of disputes between carriers and their employees. It provided for the right of employees to organize and bargain collectively, through representatives of their own choosing . . . The Act directed that disputes between an employee and a carrier should be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes¹⁸

¹⁵ 300 U. S. 515.

¹⁶ 300 U. S. 515, p. 553.

¹⁷ 119 F. 2d 39, p. 41.

¹⁸ Similar rulings are found in Brotherhood of Locomotive Firemen and Enginemen v. Chicago North Shore & M. R. Co., 147 F. 2d 723, and Washington Terminal Co. v. Boswell, 124 F. 235.

Who Are "Employees" Under the Act?

The question as to who is an "employee" under the terms of the Railway Labor Act has occasionally been a source of difficulty. Paragraph 5 of Section 1 of the Act states that the term "employee" includes "every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner or rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission . . ."¹⁹ The Interstate Commerce Commission is also given authority to amend or interpret its orders in the designation of those groups or individuals who comprise the "employee" groups.

In the case of National Council of Ry. Patrolmen's Unions, A. F. of L. v. Sealy,²⁰ the National Mediation Board certified a representative of a group of patrolmen as the accredited representative of the group for collective bargaining purposes under the Act. These patrolmen were employed by the City of Galveston to safeguard a railway and wharf terminal

¹⁹Under the Interstate Commerce Act, the Commission has the duty of supervising and controlling the accounts and reports rendered by rail common carriers. In compliance with this statute, the Commission has designated six major classifications of employees which include 128 distinct classes or crafts. These designated groups are used in the determination of the employee question under the Railway Labor Act.

²⁰150 F. 2d 500.

business owned and operated by the City. The City contended that they were not employees subject to the Act; the district court decided for the City and the case was appealed to the circuit court. This court upheld the lower court and a portion of its decision reads as follows:²¹

The term "employee" . . . includes every person in the service of the carrier who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission It is quite apparent that not every person in the service of a carrier, though subject to its continuing control and authority, is an "employee"; but only those who perform work defined as that of an employee by existing or amended orders of the Interstate Commerce Commission; and the authority thus to define employees is not vested in the Mediation Board or in the courts, but in the Commission; and it is given express authority to amend and interpret its orders on the subject. The Commission has a similar function in determining who are "carriers" under the Act²²

The Powers of the National Mediation Board in Conducting Employee Elections

Paragraph 9 of Section 2 of the Act provides that, if any dispute arises among a carriers' employees as to who are the authorized representatives of the employees, the National Mediation Board must investigate the dispute, hold elections, or utilize "any other appropriate method" of

²¹152 F. 2d 500, p. 501.

²²A similar ruling is given in Long Island R. Co. v. Department of Labor of State of New York, 177 N. E. 17, p. 24.

ascertaining the names of the proper representatives. Upon conclusion of the investigation, the Boards findings must be certified in writing to the carrier and to the employees. In such a proceeding, the Board is given full authority to designate who may participate in the election and to establish rules to govern the election procedure.

In several cases these provisions of the law have been clarified and the exclusive jurisdiction of the National Mediation Board in holding representation elections substantiated. In the case of Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees v. Virginian Ry. Co.,²³ the circuit court upheld the exclusive authority of the National Mediation Board in conducting elections. The court stated in part:²⁴

There is no doubt that in establishing the Mediation Board and giving it authority as above shown Congress intended that the decisions of the Board should be final and binding upon contending groups of employees and the carrier The general rule is that, where Congress, has appointed an administrative Board and it has acted within the scope of its authority, its findings are not subject to review by the courts, if supported by evidence, there was no irregularity in the proceedings, and the constitutional rights of persons adversely affected are not violated The control of the election proceeding and the determination of the steps necessary to conduct that election fairly were matters which Congress

²³125 F. 2d 853.

²⁴125 F. 2d 853, p. 857.

entrusted to the Board alone. Interference in these matters constituted error on the part of the court below.

Virtually the same decision was reached in the case of Brotherhood of Locomotive Firemen and Enginemen v. Keenan.²⁵

The courts have also held that, in order to justify holding an election, it is necessary to prove only that a dispute exists as to the proper bargaining representative. The fact that there are amicable relations between the employees and the employer does not preclude the existence of a dispute. In the case of National Federation of Railway Workers v. National Mediation Board,²⁶ a rivalry had developed between the Federation and the Brotherhood of Railway Carmen of America as to who was the representative of the employees. The Brotherhood exhibited "authorization cards" bearing names of 42 coach cleaners and indicating they desired Brotherhood representation, while the Federation argued that no dispute existed since the coach cleaners had negotiated a contract with the carrier through the Federation and they were satisfied with the contract. The National Mediation Board held an election, the Brotherhood was certified as the bargaining representative, and the dispute was carried to the courts. In its ruling the court held:²⁷

²⁵87 F. 2d 651.

²⁶110 F. 2d 529.

²⁷110 F. 2d 529, p. 533.

It has been pointed out that it is necessary to prove only that a dispute exists among the employees as to the identity of the representative The Board determined on the basis of the evidence before it that a dispute existed among the coach cleaners as to whether the Brotherhood or the Federation should be their representative. That evidence, as above set forth, is substantial in nature. When a finding of the Board is supported by substantial evidence it is not to be disturbed by the courts.

The courts have also held that the majority of the votes cast in an election determines the result of the election and that it is not necessary for a representative to be elected by a majority of those eligible to vote. In the case of Nashville, C. & St. L. Ry v. Railway Employees Department of American Federation of Labor, the court reasoned:²⁸

Of the contention that the Mediation Board violated the terms of the statute by certifying as representatives those chosen by a majority of those voting rather than by a majority of those entitled to vote little need be said. It is, we think, almost universal practice when society endeavors to express its collective will to ascertain it by a majority of votes cast This is on the assumption reasonably entertained that eligible voters not participating in an election assent to the will of the majority therein expressed

The National Mediation Board, in holding an election, has the authority to determine who is eligible to vote and may establish its own rules in compiling the rolls of eligible voters if it is not unreasonable or inconsistent. In the case of Brotherhood of Locomotive Firemen and Enginemen v.

²⁸93 F. 2d 340, p. 343.

Keenan,²⁹ the National Mediation Board ruled that furloughed employees, who were employed by other carriers, were not eligible to vote. In its ruling, the court upheld the action of the Mediation Board by saying:³⁰

It is not alleged that the Board acted on insufficient evidence, was guilty of fraud in reaching its decision, or that the proceedings were otherwise irregular. It is clear that no constitutional rights of the parties were impaired.

The Mediation Board had authority to interpret its own rules and amend them or set them aside in its own discretion. We do not consider that the ruling that furloughed employees were ineligible to vote if employed on other railroads is unreasonable or inconsistent³¹

The Policies of the National Mediation Board in
Relation to Employer-Dominated Labor
Organizations

The courts have sustained the National Mediation Board in refusing to allow an employer-dominated organization to participate in the selection of employee representatives and in attempting to eliminate the exercise of any influence or coercion by the employer organization. In a leading case on this subject, Brotherhood of Railway & Steamship Clerks,

²⁹ 85 F. 2d 651.

³⁰ 85 F. 2d 651, p. 654.

³¹ For additional rulings on the classification of employees and the selection of representatives for collective bargaining purposes see Brotherhood of Railroad Trainmen v. National Mediation Board, 88 F. 2d 757, and Order of Ry. Conductors of America v. National Mediation Board, 113 F. 2d 531.

Freight Handlers, Express and Station Employees v. Virginian Ry. Co.,³² the National Mediation Board had certified that the Brotherhood of Railway and Steamship Clerks was the authorized representative of both the clerical employees and the freight, station, and storehouse employees. This certification was made on the basis of "authorization cards" which were signed by the employees. The National Mediation Board did not hold an election and had refused to provide the employer organization with the names of the persons who had signed the authorization cards. This was done in an effort to eliminate influence and coercion. The Virginian Railway Company refused to recognize or bargain with the Brotherhood and continued to bargain with the "Committee Representing Clerical Employees of the Virginian Railway Company." Suit was brought by the Brotherhood to compel the Company to recognize and bargain with it as the exclusive representative of the employees concerned.

The Company, in filing an answer to the suit, denied interference with the right of the employees to bargain. It argued that the Brotherhood could not be certified as bargaining representative on the basis of signed representation cards without an election and that the certification was invalid because of an unauthorized classification of clerical and freight station employees.

³²125 F. 2d 853.

In rendering its decision the court held that the certification of one representative for two separate groups of employees was proper as long as the interests of the two groups did not conflict. As for the election, the court held that:³³

Whether a secret election rather than a checking of authorization cards against company records is a more desirable method of determining the bargaining representative of employees in any particular case, is a matter which the law has confided to the discretion of the Mediation Board and not to the courts.

The court also held that there was ample evidence of attempts at influence and coercion:³⁴

On the . . . question considered by the judge below, we think there can be no doubt but that his findings with respect to the interference by the Company with the right of self organization on the part of the employees here involved was amply supported by the testimony. Not only was there proof of the specific instances of interference and domination referred to . . . but there was also evidence which presents, as to the Committee and its successor Association, the typical picture of a company dominated union

The Committee had no definite membership and no constitution or by-laws. Dues were not assessed or collected from the members. Meetings were held infrequently and apparently no records were kept of the business transacted at the meetings The Committee was never active, and, as an organization, had no real independent existence, separate and apart from the control of the Railway.

³³125 F. 2d 853, p. 857.

³⁴125 F. 2d 853, p. 858.

Use of the Mandatory Injunction Under
the Railway Labor Act

Certain sections of the Railway Labor Act set forth requirements which must be met or complied with by the parties subject to the Act. If one or both of the parties fail to comply with the terms of the Act or with the orders of the administrative agencies established by the Act, compliance may be obtained by injunction issued by the court having jurisdiction.

In the case of the Virginian Railway Co. v. System Federation No. 40, Railway Employees Department of the American Federation of Labor,³⁵ a mandatory injunction issued by a circuit court of appeals, requiring the Company to negotiate with the certified representative of its employees, was appealed to the Supreme Court. The Company argued that the Act was not meant to impose a legally enforceable obligation to negotiate. A portion of the Company's argument reads as follows:³⁶

The requirement that the carrier shall "treat" means only that, after such a dispute and certification by the Board, if the carrier desires to deal with a representative of the craft or class involved, it must treat with the person or organization found by the Board to be the authorized representative It does not mean that as a consequence of a dispute and certification (but not otherwise) the carrier is under a legally enforceable obligation to negotiate with a representative of its employees

³⁵300 U. S. 515.

³⁶300 U. S. 515, p. 519.

Even if Congress used the phrase "treat with" in the sense of "negotiate with," it is obvious that it did not intend thereby to create a legally enforceable obligation A duty to negotiate is an imperfect obligation beyond the power of courts of equity to enforce Negotiation depends upon the feelings, desires and mental attitude of those negotiating, and these are completely beyond judicial control.

The Company further contended that, if Congress did intend to require such negotiations, the statute was in violation of the due process clause of the Fifth Amendment to the Constitution. In addition, it pleaded that the injunction which had been issued was in violation of the Norris-LaGuardia Act which forbade the issuance of "blanket" injunctions.

In rendering its decision and upholding the use of the injunction to require negotiation, the court held:³⁷

There is no want of capacity in the court to direct complete performance of the entire obligation; both the negative duties not to maintain a company union and not to negotiate with any representative of the employees other than respondent and the affirmative duty to treat with respondent. Full performance of both is commanded

The court also held that the injunction, as used by the lower court, was not in violation of the Norris-LaGuardia Act.³⁸

The evident purpose of this section . . . was not to preclude mandatory injunctions, but to

³⁷300 U. S. 515, p. 550.

³⁸300 U. S. 515, p. 563.

forbid blanket injunctions against labor unions, which are usually prohibitory in form, and to confine the injunction to the particular acts complained of We deem it unnecessary to comment on other similar objections, except to say that they are based on strained and unnatural constructions of the words of the Norris-LaGuardia Act, and conflict with its declared purpose³⁹

The Basis for Court Review of the Rulings
of the National Mediation Board

The courts have consistently maintained that a finding of fact by the National Mediation Board must be upheld by the courts. However, the courts have reserved the right to determine whether a question of fact is supported by sufficient evidence, for the question of adequate evidence is a question of law. In general, if the findings, the decisions, or the administrative orders of the National Mediation Board have been within the scope of its authority, if the proceedings have not been irregular, if the constitutional rights of the parties have not been violated, and if the findings or orders of the Board are supported by sufficient evidence, the actions of the National Mediation Board have been sustained.

In the case of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees v. Nashville, C. & St. L. Ry. Co.,⁴⁰ the National Mediation

³⁹ Valid use of the injunction is also considered in McNulty v. National Mediation Board, 18 F. Sup. 494; and Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees v. Virginian Ry. Co., 125 F. 2d 853.

⁴⁰ 94 F. 2d 97.

Board had grouped clerical and freight station employees into a single unit and certified the Brotherhood of Railway and Steamship Clerks as the bargaining agent for this group. The carrier refused to bargain with such a classification of employees and suit was brought by the Brotherhood to compel the carrier to negotiate with it as the authorized representative. The district court denied relief and was upheld by the circuit court on the ground that supporting evidence was not introduced to justify the National Mediation Board in classifying two different groups of employees into a single unit. The court appeared to be concerned at upsetting the finding of the Board but maintained that the question of sufficient evidence was a question of law. The court held, in part:⁴¹

The question as to the existence of a distinct class or craft is, of course, one of fact, and courts are reluctant, even where not precluded by statute, to disturb administrative decision thereon, but a conclusion that a craft does or does not exist is but the finding of an ultimate fact, and whether or not it is based upon substantial evidence can be determined only if the evidentiary facts giving rise to it may be examined, and the conclusion must then be sustained only if such evidentiary facts support it. The question as to the existence of substantial supporting evidence becomes one of law.

This decision was given support in the ruling of a circuit court of appeals in the case of National Federation of Railway Workers v. National Mediation Board.⁴² The court

⁴¹94 F. 2d 97, p. 99.

⁴²110 F. 2d 529, p. 533.

held that a finding of the National Mediation Board was supported by substantial evidence and, therefore, was not to be disturbed by the courts.

There have been several cases in which the courts have stipulated the grounds upon which a ruling or decision of the National Mediation Board might be attacked in the courts. These stipulations were clearly established in the case of Brotherhood of Locomotive Firemen and Enginemen v.

Keenan:⁴³

The general rule is that, where Congress has appointed an administrative Board and it has acted within the scope of its authority, its findings are not subject to review by the courts, if supported by the evidence, there was no irregularity in the proceedings, and the constitutional rights of persons adversely affected are not violated.⁴⁴

Summary

It is apparent that the courts have not been a major source of difficulty in the implementation of the intent of Congress as expressed by the Railway Labor Act and administered by the National Railroad Adjustment Board and the National Mediation Board. The power of Congress, as derived from the Constitution, to regulate the labor-management

⁴³ 87 F. 2d 651, p. 654.

⁴⁴ Substantially the same ruling was given in Nashville, C. & St. L. Ry. v. Railway Employees' Department of American Federation of Labor, 93 F. 2d 340, p. 342, and Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees v. Virginian Ry. Co., 125 F. 2d 853, p. 857.

relationship in the railroad industry, has not been seriously questioned in many years. The constitutionality of the provisions of the Railway Labor Act of 1926, and of its amendments in 1934, were upheld by the Supreme Court in no uncertain fashion when this question was considered by that body.

The interpretation of this legislation by the courts has served to clarify certain problems that have arisen to trouble the administrative agencies charged with the implementation of this statute. The courts have ruled that the Interstate Commerce Commission will be upheld in its designation of the carriers and of the employees subject to the Act, unless the findings of the Commission can be proven to be arbitrary or capricious. In conducting elections or in utilizing other methods to determine the proper representatives of the employees for collective bargaining purposes, the courts have ruled that the National Mediation Board has full authority to decide what means will be selected to determine the employees' representatives, to decide who shall participate in a given election, and to establish the rules necessary to control the election procedure. The courts have also upheld the Board in refusing to allow "company unions" to participate in the selection of employee representatives, and in utilizing methods designed to minimize the possibility of influence or coercion during such proceedings.

The broad powers of the administrative agencies in executing the duties and responsibilities assigned to them by the statute are indicated clearly by the courts when judicial review is considered. If the orders, practices, and procedures of the administrative agencies are within the scope of their authority, if these orders are supported by evidence, if there were no irregularities, and if the constitutional rights of those adversely affected by the acts of the agency have not been violated, the courts have refused to review such decisions. The absence of unconstitutional provisions in the statute and the affirmative manner in which the courts have sustained the administrative agencies indicate that this legislation and the methods and practices of its agencies have received the approval of our judicial system.

CHAPTER III

THE NATIONAL RAILROAD ADJUSTMENT BOARD

The National Railroad Adjustment Board, created by the Railway Labor Act of 1926 as amended on June 21, 1934, is the result of many years of effort on the part of Congress to develop effective and orderly machinery for the settlement of certain types of disputes. Prior to World War I, certain labor organizations representing the engineers, firemen, and train-service employees had been able to negotiate agreements with the carriers concerned which resulted in the establishment of local adjustment boards. These boards aided in the settlement of disputes which arose from the interpretation or application of existing collective bargaining agreements.

In the period of government control and operation during World War I, the Director General utilized this procedure to settle disputes arising from grievances and from the application or interpretation of agreements. Three adjustment boards were established for various classes and groups of employees. These boards were organized on a bipartisan basis and consisted of eight members, four members being selected by the carriers and four by the employees. In the event of deadlock, any four members of the board might refer the dispute to the Director General for a decision. This system apparently worked very smoothly; in fact, the success of this war-time

measure led to the inclusion of this type of adjustment procedure in the Transportation Act of 1920.

Title III of the Transportation Act of 1920 provided among other things, "that railroad Boards of adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers or organization or group of organizations thereof." It was thought that under these provisions, the carriers and the employees would organize adjustment boards which could act in the settlement of many minor disputes not adjusted directly by the parties. The Act did not stipulate the manner in which these boards were to be organized or establish any methods of procedure. Awards of the boards were not binding upon the parties.

The adjustment boards envisioned by the Transportation Act of 1920 were never successful. The engineers, firemen, conductors, and train-service employees were able to establish such boards, but all other groups of employees made little or no progress. The minor disputes which were to be settled by these boards completely swamped the Railroad Labor Board and within a short time both management and labor were demanding new legislation.

This demand was fulfilled by the Railway Labor Act of 1926 which provided that "Boards of adjustment shall be created by agreement between any carrier or group of carriers, or

the carriers as a whole, and its or their employees." However, it did not provide for any penalty upon the parties for failure to comply with the provisions of the statute.

The procedure to be followed in the establishment of the adjustment boards was set forth in considerable detail. The agreement was to be in writing and state the classes or crafts of employees included within the jurisdiction of the board. The agreement also was to formulate rules to govern hearings before the board, to provide that a majority of the board members were competent to render an award, and to stipulate that the award was to be final and binding upon both parties to the dispute. Membership upon the board was to be equally divided between labor and management, and the methods used in the selection of members and filling of vacancies were to be included within the agreement establishing the adjustment board.

The provisions of the Railway Labor Act of 1927 creating these adjustment boards were not much more successful than those of the Transportation Act of 1920. Almost immediately following the passage of the law, the carriers and the employees became embroiled in a controversy as to whether these boards were to be local, regional, or national.¹ The

¹Under government control of the railways and also under the Transportation Act of 1920, the adjustment boards had been regional or national in scope.

carriers, generally, insisted upon the establishment of local or line boards; representatives of the railway labor organizations demanded national adjustment boards but probably would have accepted regional boards. The Board of Mediation was compelled, on many occasions, to assist in the formation of these boards and on many railroads it was several years before they were organized. On other railroads, adjustment boards were never organized for some groups or classes of employees.²

Those boards of adjustment which were created under the Act did not function effectively. They were bipartisan and no provisions were made for the settlement of disputes in which the board became deadlocked. There was a tendency for board members to vote on a partisan basis and the boards, instead of settling disputes, merely accumulated them.

It was for these and other reasons that Congress established the present National Railroad Adjustment Board in 1934. This Board has jurisdiction over "disputes between an employee or group of employees and a carrier growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions."

²See W. H. Spencer, The National Railroad Adjustment Board, University of Chicago, Studies in Business Administration, Vol. VIII, No. 3 (Chicago, Illinois: The University of Chicago Press, 1938), pp. 11-13.

The Organization of the National
Railroad Adjustment Board

Section 3 of the Railway Labor Act as amended in
1934 provides that:

there is hereby established a Board, to be known as the "National Railroad Adjustment Board," the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided--

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

The Board thus created is strictly a bipartisan organization. The carriers, each acting through its board of directors, its receiver, or trustees, prescribe the rules under which their representatives to the Board are selected and designate the division of the board upon which the representative is to serve. However, no carrier or system of carriers may have more than one representative on any division of the Board. The national labor organizations, acting through their chief executives, are responsible for prescribing the rules under which the labor members of the Board are selected and must designate the division upon which the appointed members will serve. No labor organization may have more than one representative on any division of the Board. Members of the Board are compensated by the parties appointing them while all other expenses of the Board are paid by the United States government.

If the carriers or the labor organization do not appoint their representatives to the Board, the Act provides that the National Mediation Board must make the appointment. Any individual so selected must have his interests associated with the interests of the carriers or the group of labor organizations which he is to represent. In addition, if a dispute arises as to the right of a national labor organization to participate in the selection of representatives to the Board, the claim must be investigated by the Secretary of Labor. If the claim has merit, the National Mediation Board, upon notification, must establish a three man investigating board. One member of this board represents the accredited labor organizations and is selected by them, one member represents the claimant, and a third or neutral party is appointed by the National Mediation Board. This investigating committee must determine the validity of the claim of the labor organization desiring participation within thirty days and the findings of the committee are final and binding upon the parties.

As previously pointed out, the National Railroad Adjustment Board is divided into four divisions, each of which functions and makes its decisions separately and independently from the other divisions. Each division has jurisdiction over disputes involving different classes or groups of employees. The First Division has jurisdiction over train, engine, and yard-service employees; the Second Division considers the

disputes of the shop-craft employees; the Third Division has jurisdiction over the station, tower, and telegraph employees, signalmen, clerks, freight handlers, express, station, and store employees, maintenance-of-way workers, sleeping-car conductors and dining-car employees; while the Fourth Division hears those disputes arising from the marine-service employees and all other employees not included within the jurisdiction of the first three divisions. Each of these divisions consists of ten members, except for the Fourth which has six members.

The National Railroad Adjustment Board, as a unit, has very few functions to perform and seldom meets as a whole. The Act does not require or contemplate regular meetings of the Board and the only powers which the Act confers upon it as an entity are to employ and fix the compensation of a staff, subject to the approval of the National Mediation Board, and to adopt such rules of procedure as are necessary to control the proceedings before the various divisions.

Paragraph (w) of Section 3 provides that "any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may deem to be necessary." For several years this provision of the law was not utilized as the labor organizations did not want a repetition of the situation in which several adjustment

boards were handing down diverse rulings on the same type of case.³ However, on May 19, 1949, the chief executive officers of the five operating brotherhoods and the three regional carriers' committee for the National Railroad Adjustment Board agreed upon the establishment of additional regional adjustment boards to handle the press of cases accumulating before the First Division. These supplemental boards consider only those cases which are assigned to them by the First Division and have not been certified for the appointment of a referee.⁴

The Act does not prevent the carriers and their employees from mutually agreeing to establish system, group, or regional adjustment boards for the purpose of considering the type of dispute which would be referred to the National Railroad Adjustment Board. Either party to such an agreement may, however, upon ninety days notice to the other party elect to come under the jurisdiction of the National Railroad Adjustment Board.

The Procedures and Practices of the National
Railroad Adjustment Board

The Railway Labor Act establishes only the most general provisions in reference to the procedure of the National

³Ibid., p. 20.

⁴See Fifteen Years Under the Railway Labor Act, Amended and the National Mediation Board, 1934-1949 (Washington: Government Printing Office, 1950), pp. 21-22.

Railroad Adjustment Board. Section 3 (u) of the Act states that "the Adjustment Board shall meet within forty days of the approval of this act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with this statute." In accordance with this directive, the Board, on October 10, 1934, issued Circular No. 1, which establishes a few general rules of procedure for the guidance of all divisions.⁵ These rules are very simple and informal.

The same section of the Act specifies that each division must annually designate a chairman and a vice-chairman and that the chairmanship and vice-chairmanship must alternate between the two groups forming the division so that these offices will be held alternately by a representative of the carriers and a representative of the employees. If a vacancy occurs, the vacancy is to be filled for the unexpired term by the selection of a successor from the same group.

The remaining important provision of the Act dealing with procedure is found in Section 3 (i) which states that those disputes growing out of grievances or out of the interpretation or application of agreements must be "handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." If

⁵W. H. Spencer, op. cit., p. 38.

the dispute is not adjusted in this manner, it may be referred by a petition of either or both parties to the appropriate division of the Adjustment Board with a full statement of all the facts pertaining to the case.

This section authorizes either party to submit a dispute to the Adjustment Board but, in practice, almost all disputes originate with the employees and are submitted by them. This is easily understood if it is remembered that the carriers have the ability, if they desire, to modify or to interpret the rules of the collective agreement. That is, a carrier may, for example, direct a yard-service employee to perform road-service work even though such a directive violates the letter and the intent of the agreement. This places upon the employees the burden of securing the intended application of the rules by submission of the dispute to the Adjustment Board.

It would appear from the provisions of the Act that an individual employee might present a case to the Adjustment Board for settlement. The statute is not clear on this point but the wording of the law apparently permits such action. Section 3 (1) refers to "disputes between an employee or group of employees and a carrier or carriers" and states that "disputes may be referred by petition of the parties or by either party to the . . . Adjustment Board." Section 3 (j) states that "the parties may be heard either in person, by counsel,

or by representatives, as they may respectively elect." The several divisions of the Adjustment Board have refused, however, to recognize the apparent intent of the Act. If an individual employee files a claim, it is docketed. When the question as to whether it will be set down for hearing develops, the division invariably deadlocks. The claimant is then notified that the division cannot agree to hear the claim and, since this is a question of procedure, it cannot be submitted to a referee for decision. The result has been that individual employees have been denied the privilege of presenting their claims in person.⁶

If a dispute is not settled in conference between the parties, either or both parties, as stated above, may submit the dispute to the appropriate division of the Adjustment Board. Whether the dispute is submitted jointly or is an ex parte submission, the rules of the Board require that all of the parties to the dispute be named and that, in the "statement of claim," the particular question upon which a decision is desired be stated explicitly.

If a joint submission of the dispute is made, the parties must, if possible, submit a joint statement of the "controlling facts." If they are in disagreement as to the facts of the dispute, their respective interpretations may be stated

⁶Ibid., p. 40.

independently. Following the statement of the "controlling facts" in the dispute, each party must set forth its "position" in respect to the controversy. In the statement of "position," each side is expected to present "clearly and briefly . . . all relevant, argumentive facts, including all documentary evidence submitted in exhibit form; quoting the agreement or rules involved, if any."

In the event that the disputants cannot agree upon a joint submission of the case, either party may make an ex parte submission. In such an event, the petitioner must give written notice to the appropriate division of the Adjustment Board of his intention to file an ex parte submission within thirty days. This notice must contain a statement of the question involved together with a brief description of the controversy and a copy of this notice is given to the other party to the dispute. The division secretary advises the other party of the receipt of the notice and requests that its submission be filed within this same period.⁷

Hearings Before a Division Without a Referee

Upon completion of all the records in a dispute, the

⁷The carriers, as they are generally respondents, object to this procedure as they feel that they are being required to answer a complaint without being notified as to the grounds of the complaint or the evidence submitted by the other party. This contention appears to be unjustified when it is remembered that all disputes must be considered in conference between the parties "up to and including the chief operating officers of the carriers concerned."

case is docketed by the division having jurisdiction and a hearing date is established. The Act provides that notice of the date of hearing must be given to the "employee or employees and the carrier or carriers involved in any dispute," and in practice the parties are notified by letter or telegram after the time of hearing has been set by the division secretary.

The Board has established a rule authorizing oral hearings if requested by either or both parties. If oral hearing is not requested, the decision of the division is made upon the basis of the record, but in most cases oral hearings are held. As individual employees have not been authorized to appear before the division, oral testimony is usually presented by the general chairman or some other official of the labor organization concerned. The carriers are usually represented by a specialist in industrial relations as well as by one or more lawyers.

During the hearing, which is very informal, the position of the parties is restated. There is no formal cross-examination, witnesses are not called, and oaths are not taken. If statements of fact or arguments are made which are not in the written record, this testimony is not preserved. The rules of the Board require that the original written submission contain all relevant facts and evidence. The oral testimony is simply a device for the explanation and elaboration of facts previously submitted.

When the hearings are concluded on a particular case, the division does not attempt to reach a decision and make an award. Other cases which are on the docket are heard, and, when several cases have been considered, the division, in executive session, attempts to reach a decision on each dispute. The controversy is once again discussed by the members of the division and, if a decision can be reached, an award is formulated and adopted by a majority vote of all of the members of the division. The parties are then notified by the division secretary in a memorandum decision which sets forth the findings of the division and the award. If a decision cannot be reached, the case is set aside with other such cases for formal deadlocking at a later date. When a number of cases are accumulated, the division certifies that it is deadlocked on these cases and a referee is appointed to aid the division in reaching a decision.⁸

Hearings Before a Division With a Referee

Section 3 (1) of the Railway Labor Act provides that, if a division is unable to render an award because of a deadlock or inability to secure a majority vote of the division

⁸For a detailed discussion of the practices and procedures of the several divisions of the National Railroad Adjustment Board see W. H. Spencer, *op. cit.*, pp. 37-48. Also see L. K. Garrison, "The National Railroad Adjustment Board: A Unique Administrative Agency," The Yale Law Journal, Vol. 46, pp. 567-598.

members, the division must "forthwith agree upon and select a neutral person, to be known as 'referee,' to sit with the division as a member thereof and make an award." If the division cannot agree upon a referee within ten days of the date of deadlock, the division, any member of the division, or the party or parties to the dispute may certify this fact to the National Mediation Board. Within ten days of this certification, the National Mediation Board must appoint a neutral referee to sit with the division and make an award. The compensation of the referee is fixed and paid by the National Mediation Board.

After the referee has been selected by the division or by the National Mediation Board, the cases that have been deadlocked are presented to him by the members of the division. A labor member and a carrier member present each case to the referee, the record is reviewed, and the issues, precedents, and arguments are emphasized and elaborated. Following this presentation, all of the other labor members may add to the principal argument, and then the carrier members make a similar statement on behalf of the carrier.

Since the referee does not have a record of the original oral hearings before the division, he must rely upon the statements made by the division members. If there is a difference of opinion as to the facts and arguments presented in the oral hearings, the referee may rely upon the statements made by one

or more members of the division, or he may choose to make his decision entirely upon the written record.

After the cases have been considered, the referee studies them independently and then presents his findings and award to the division in formal session. Before the parties vote upon the adoption of the award, it is discussed again by the division. This period of discussion is valuable in that it may protect the referee and keep him from making an unwise decision, but it may be dangerous in that it may degenerate into a reargument of the case. Sometimes the referee may modify the language of the award, but the substance is rarely changed as a result of this discussion.

The procedure for final adoption of the award as described by a person with extensive experience as a referee is as follows:⁹

When the members of the division have had their say on the award as presented, a member of the partisan group in favor of which the award has been made, moves its adoption. If the award is in favor of the labor organization, the labor members vote with the referee for its adoption; and the carrier members vote against it. If the award is in favor of the carrier, the carrier members vote with the referee to adopt the award; in this event the labor members are usually silent.

Review of Awards By the Courts

There is no provision in the statute under which the

⁹W. H. Spencer, op. cit., p. 46.

carrier or the union may appeal an adverse ruling of the National Railroad Adjustment Board. The Board, on the other hand, does not have any power to enforce its awards. A carrier or a union may continue to violate an order of the Board with impunity unless additional steps are taken to enforce compliance.

The union has two courses of action which it may take to obtain carrier compliance with a favorable Adjustment Board award. First, it may petition the appropriate United States District Court for an order enforcing the Board's award under the provisions of the statute. Second, it may apply economic pressure. Section 3 (p) of the Act provides that, when a carrier does not comply with an order of the Board, a claimant may petition the courts for the enforcement of an award, that the findings and orders of the division of the Board must be accepted as prima facie evidence of the facts in the case, and that the petitioner is not liable for court costs. Actions at law under this provision must be instituted within two years from the time when the cause of action occurs.

Since the unions have not resorted to court action, it must be presumed that the carriers have, in general, willingly complied with the awards of the Board, or that compliance has been obtained by threatened strikes. The net result has been that, with few exceptions, there has been no

judicial review of the procedures and practices of the National Railroad Adjustment Board.¹⁰

The unions have felt that they cannot compete with the carriers in the courts and they have tended to rely upon their economic strength for the enforcement of the awards of the Board. If the carrier does not comply with the award within a reasonable time, a strike vote is taken.

At this point the National Mediation Board may intervene and attempt to mediate the dispute. If mediation is not successful, arbitration is urged. However, if either or both parties refuse arbitration, the National Mediation Board, at its discretion, may recommend to the President that an emergency board be appointed to investigate and report on the controversy. In this manner, disputes within the jurisdiction of the National Railroad Adjustment Board have, in recent years, found their way before Emergency Boards appointed by the President.

It will be noted that the statute does not contain any provisions under which the carriers may appeal an award of a division of the Adjustment Board to the courts. Thus, the carrier does not have an opportunity to contest the validity of an award in the courts unless a petitioner brings

¹⁰Of the first 1,616 cases decided by the Adjustment Board, not one was taken to the courts. See L. K. Garrison, *op. cit.*, pp. 588-589. The first court case considering an award of the Board was Griffin v. Chicago Union Station Co., 13 F. Supp. 722, in which the court upheld the claimant.

action to enforce an award. Since the labor organizations have, in general, refused to resort to the courts, the carriers contend that they have been denied the opportunity to secure judicial review.¹¹

On the other hand, if the Adjustment Board denies a claim of the labor organizations, the Act does not contain any provisions under which the decision may be appealed to the courts. The case might be raised again with another carrier or with the same carrier and a different employee, but probably the Adjustment Board would again rule against the labor organizations on the basis of precedent. Representatives of the labor organizations maintain that this process continually reduces their rights under existing agreements by the establishment of unfavorable precedents. The carriers answer that a favorable award may serve to extend the rights of labor under the working agreement and that these awards stand as precedents in favor of the labor organizations.¹²

The Nature of the Awards of the National Railroad Adjustment Board

The National Railroad Adjustment Board, as it is now

¹¹One writer maintains that this contention is not warranted, for the carriers have not appealed to the courts to be relieved of an award upon the following equitable grounds: (1) that appeal to the courts is the only practical way to secure review; (2) that existing legislation does not protect the carriers from unwise awards; or (3) that an award is not supported by evidence or by the rules of the working agreement. See W. H. Spencer, op. cit., pp. 57-58.

¹²Ibid., p. 57.

organized, has been functioning since the fall of 1934. During this period, it has considered an enormous number of disputes covering an extensive range of subjects. A detailed classification of the awards of the Board is perhaps impractical but they may be classified in a general manner under the following headings: (1) claims for additional pay for time actually spent working; (2) claims for time lost because of the employers' disregard of seniority; (3) requests for the suspension of discipline or the return to service of employees allegedly dismissed unjustly; (4) protests against alleged violations of the rules of the working agreement by the carrier; and (5) miscellaneous claims for the violation of the terms of the working agreement.¹³ All of these disputes, of course, may be included under the broad description of the jurisdiction of the Adjustment Board; that is, the consideration of grievances or the interpretation and application of existing working agreements in relation to rules, wages, or working conditions.

It is not possible, in a study of this kind, to attempt a qualitative evaluation of the awards of the Board, but it is possible to obtain an appreciation of the achievements of the Board by a consideration of the number of cases which have come before it, and the disposition of those cases.

¹³Ibid., p. 51.

From the date of the formation of the National Railroad Adjustment Board, 38,360 new cases have been docketed through June 30, 1952. The Adjustment Board has disposed of 9,793 of these cases by decision without a referee and 12,582 by decision with a referee. An additional 11,278 cases have been withdrawn for various reasons. There are 4,717 disputes now open and pending before the several divisions of the Board.¹⁴ Table 1 is indicative of the manner in which this workload has been distributed among the several divisions. It will be noted that the First and Third Divisions have considered the majority of the disputes coming before the Board.

The Inquiry of the Attorney General's Committee
Into the Administrative Procedures of the
National Railroad Adjustment Board

On February 16, 1939, President Roosevelt, in a letter to the Department of Justice, requested the Attorney General to undertake an investigation and study of the rules and procedures of the various administrative agencies of the government in order to detect existing deficiencies and recommend means of improvement. As one result of this directive, the Attorney General appointed a committee which made an extensive inquiry into the rules of procedure and the general

¹⁴Eighteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1952 (Washington: Government Printing Office, 1953), pp. 58-59.

TABLE 1: CASES DOCKETED AND DISPOSED OF BY THE NATIONAL RAILROAD
ADJUSTMENT BOARD, 1935 - 1952, INCLUSIVE*

Cases	All Divisions		1st Division		2nd Division		3rd Division		4th Division	
	1935-52	1952	1935-52	1952	1935-52	1952	1935-52	1952	1935-52	1952
Open and on Hand Beginning of Period.....										
New Cases		3,855		3,472		57		306		20
Docketed.....	38,360	2,815	29,676	2,027	1,620	110	6,227	575	847	103
Total Number of Cases on Hand and Docketed...	38,360	6,670	29,676	5,499	1,620	167	6,227	881	847	123
Cases Disposed of	33,653	1,953	25,490	1,313	1,554	101	5,810	464	799	75
Decided With- out Referee..	9,793	184	8,332	128	553	19	695	30	213	7
Decided With Referee.....	12,582	1,335	7,234	802	727	73	4,169	401	452	59
Withdrawn.....	11,278	434	9,924	383	274	9	946	33	134	9
Open Cases on Hand, Close of Period.....	4,717	4,717	4,186	4,186	66	66	417	417	48	48
Heard.....	4,190	4,190	3,796	3,796	34	34	324	324	36	36
Not Heard....	527	527	390	390	32	32	93	93	12	12

*Eighteenth Annual Report of the National Mediation Board Including the Report of
the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1952 (Washington:
Government Printing Office, 1953), pp. 58-59.

practice and methods of the National Railroad Adjustment Board.¹⁵ The immediate result of this inquiry was the publication of two monographs by the Department of Justice; Monograph No. 15 set forth the preliminary conclusions of the investigating staff which were submitted to the committee, and Monograph No. 17 constituted the final staff report. In addition, perhaps the most adequate statements that may be found as to the position of the carriers and of the labor organizations in relation to the rules of procedure and the general methods and practices of the National Railroad Adjustment Board were submitted to this committee and became a part of the record.

In the two monographs mentioned above, the general character and purposes of the National Railroad Adjustment Board, together with its procedures and methods, are discussed at length. The relationship of the National Mediation Board to the National Railroad Adjustment Board is also considered. No conclusions or recommendations are found in these studies, but the bipartisan nature of the Adjustment Board and the difficulties which such a board may face are well illustrated

¹⁵The directive of the President and the various documents and reports developed by this committee have been compiled in a single volume by H. E. Jones, Inquiry of the Attorney General's Committee on Administrative Procedure Relating to the National Railroad Adjustment Board (New York: Eastern Committee for the National Railroad Adjustment Board, 1940). Mr. Jones is chairman of the Bureau of Information of the Eastern Railways.

by the following extract which constitutes a portion of the preliminary report:¹⁶

Indispensable to even a superficial understanding of the Board's functions is a taste of the general atmosphere in which it carries on its work. All is not serene and peaceful as in most theoretically non-partisan government agencies, but the bipartisan character of the agency makes itself felt even in the personal relations of the Board members among themselves. It seems to be a fact that about once every two weeks tempers in Division I became so inflamed that one Board member challenges a Board member of the other side to a fight. A referee relates that he once invited a member from each side, separately, to lunch with him. Each invitation was at first accepted, but when each member learned that the other member was to be present, both members definitely declined. It is said that never yet have a labor member and a carrier member of Division I lunched together, although they sit at the same hearings day in and day out and work in adjoining offices. Members of Division I on both sides have not hesitated to express in strong language to an outsider their firm conviction that members of the other side are "dishonest," "unfair," and "indecent" and the language is not always limited to such printable terms. The charge is earnestly made by some labor members that the carrier representatives are deliberately attempting to obstruct the Board's business for the purpose of carrying out a carefully formulated design to destroy the Board, and carrier members charge the labor representatives with bad faith in asserting unreasonable claims.

This spirit of intense antagonism and bitterness is not always kept within the bounds of personal relations among the Board members themselves. On some occasions it has had its effect upon referees. It is a well-known fact confirmed by both sides that in at least one instance labor members of the Board heaped such severe personal abuse upon a referee who was thought to be about to decide in favor of carriers that the referee could not endure further unpleasantness and resigned without deciding the cases before him.

¹⁶ Ibid., pp. 86-88.

Of the greatest significance in this connection is the difference between the attitudes of members of Divisions I and III on the one hand, and the attitudes of Division II on the other. Particularly in Division I there is a striking degree of animosity and bellicosity. The output of Division I fluctuates with its varying moods. For periods of days, the two factions will continue in an antagonistic and unyielding frame of mind, with no inclination to compromise, and every case, no matter how clear, will be deadlocked. During other periods there is some mellowing of tempers and the two sides may succeed in getting together on some of the easier cases. Occasionally, perhaps once every two months, a spell of good temper will set in and a score or more of cases previously deadlocked may be decided in the course of a few days. Carrier and Labor representatives in Division II, however, are friendly and cooperative, and as a result they get their work done with dispatch and without undue unpleasantness

Division I is now more than three years behind in its docket, and at least a part of the explanation of its principal difficulties is the bitterness which prevails between the two factions. Inasmuch as Division II succeeds so well in deciding its cases with efficiency and with considerable goodwill, the important question arises whether or not the reasons for these differences are discoverable

Unfortunately, however, the explanations are not only exceedingly elusive, but, to the extent that they can be discerned, they seem to be very largely of such a nature that easy remedies are not possible. Perhaps the differences in the prevailing atmospheres of Divisions I and II are largely explicable in terms of the human equation

Other reasons for the differences of Division I and II, however, may be of considerably greater importance, and, perhaps, less speculative. A clue is found in the very fact that fewer cases within the jurisdiction of Division I are successfully settled on the properties of the carriers and that partly as a consequence, the volume of disputes which reach Division I is several times that of the cases brought to all the other divisions. Division II represents more employees than Division I, but Division I handles nearly 80% of the cases and Division II only 6%. One reason for this is the relative

uniformity of rules in the agreements throughout all of the shop crafts (Division II) all over the nation, as compared with the diversity of rules in the transportation field (Division I) among different crafts and different carriers. Furthermore, the transportation service is more complicated than the shop crafts' work in that such principles as payment of wages on a mileage basis give rise to many disputes in transportation that do not rise among the shop crafts. Furthermore, the "arbitrariness" penalties, and special allowances are much more highly developed in the rules of the transportation unions and account for a large portion of the controversies which reach the Board.

It may be concluded from the above that the bi-partisan nature of the several divisions of the National Railroad Adjustment Board has been a major source of difficulty in the prompt and orderly settlement of disputes. This appears to be especially true when the Division is composed of members who are personally antagonistic and the Division is called upon to decide a large number of cases involving exceedingly complex issues.

The Attitude of the Carriers and of the Labor
Organizations Toward the Rules and Practices
of the National Railroad Adjustment Board

In a document submitted to the Attorney General's committee by the labor members of the National Railroad Adjustment Board,¹⁷ the labor organizations defended the general rules of procedure established by the Board in Circular No. I of October 10, 1934. Their position is clearly summarized by

¹⁷Ibid., p. 211.

the following statement:¹⁸

We submit that the rules adopted by the National Board, following the enactment of the amended Act . . . represented what both the Carrier and Labor Members understood, at that time, to be the requirements of the amended Act. When these rules were promulgated they were based on the practical experience of many years standing of the Railroad Union and Carrier Officers, and the rules and the procedure adopted thereunder, followed very closely the rules and procedure of the National Adjustment Boards in existence during Federal control; the Regional Boards established under the Transportation Act of 1920, and also the rules and the procedure agreed to by the several Unions and Carriers acting separately, which governed the operation of the System Adjustment Boards set up under the Railway Labor Act of 1926, which latter Boards were supplanted by the present National Adjustment Board. We do not perceive of the necessity for changes in the present rules or the procedure required thereunder. In the main, we believe both to be adequate for anyone whose intentions are fair and honest.

On the other hand, the carriers were critical of the existing rules of procedure and suggested the adoption of several additional rules.¹⁹ The carriers maintained that the existing rules were developed to be applied in conjunction with the adjustment provisions of the Railway Labor Act of 1926, and that they should be amplified for the "entirely new and different type of labor adjustment" contemplated by the amendments of 1934. The carriers proposed that new rules be formulated and adopted in relation to the following:²⁰

¹⁸Ibid., pp. 212-213.

¹⁹Ibid., pp. 221-223.

²⁰Ibid., p. 222.

(1) Procedure providing for making proof of disputed facts and for testing the accuracy of partisan allegations of fact; (2) Procedure to be followed in ex parte submissions and proper service upon respondent; (3) Procedure for due notice to interested persons not named as parties to the proceeding and for making intervention by such persons possible; (4) Procedure for determining jurisdictional questions; (5) Procedure with respect to the right of parties to hearing before a referee.

These suggestions were made by the carriers on the ground that judicial review of an award by the Board was a practical impossibility under the existing law and that they were necessary to obtain "fair and equitable" consideration of the interests of all parties concerned.

Both the carriers and the railroad labor organizations submitted statements to the Attorney General's committee in which they evaluated the National Railroad Adjustment Board in terms of their own attitudes and experience. No attempt can be made to analyze these representations in detail, but a brief summary of these documents is sufficient to establish the position of the parties.

The carriers were more critical of the practices of the National Railroad Adjustment Board than were the labor organizations. The carriers maintained that the Adjustment Board, as it was being operated and administered, was not a success. Seven specific suggestions to improve the functioning of the Adjustment Board were made. It was recommended that each submission or "statement of facts" made in a dispute

should be required to contain a full description of the claim and that the other party to the dispute should be given adequate opportunity to reply; that time limits should be placed on claims for retroactive awards; that "proper" means of proof should be provided for in determining disputed facts in a controversy; that persons who might be adversely affected by a proceeding before the Board should have the opportunity to intervene; that interested parties to a dispute should be allowed to appear and testify before a referee, if one was appointed to settle a case; that the rules of procedure before the several divisions of the Adjustment Board should be made uniform; and that the opinions of the various divisions in making an award should be prepared and published. In addition, it was maintained by the carriers that the procedures of the Board in deciding upon certain types of disputes had produced decisions which were uniformly unjust. That is, the interpretation or the application of the rules of the working agreement in certain types of disputes uniformly tended to penalize the carrier unjustly by requiring the payment of wages for little or no work performed, thus reducing the efficiency of the carrier and its ability to produce an economical transportation service.²¹

The criticisms of the National Railroad Adjustment

²¹Ibid., pp. 257-288.

Board made by the labor organizations were not severe. According to the labor organizations, the Board is confronted with four major problems: (1) the great and ever-increasing number of cases pending before the First Division; (2) the problem of providing adequate notice to the carriers as to the nature of claims filed with the Board; (3) the question of the best way to secure proof of disputed facts in a controversy; and (4) the question of whether notice of hearing should be given to persons who were not parties to a dispute, but who might be adversely affected by a decision of the Board.²²

The labor organizations expressed the belief that all of these problems should be solved by the parties concerned, and that no major revisions of the statute were necessary. The following statement aptly expresses the position of the labor organizations:²³

If this Board were purely a public organ, these difficulties might present an unsolvable problem. The fact, however, that there exist these private agencies which together with government are co-sponsors of this tribunal, opens an avenue of solution. The fact that these agencies have already entered upon negotiations considering ways and means of perfecting the proceedings of the Board is a significant development. Without continuous and bona fide cooperation between these parties and between them and government, the continuous functioning of the Board will be difficult

²²Ibid., pp. 372-373.

²³Ibid., pp. 372-373.

if not impossible. Accordingly, in a peculiar sense the procedure of this Board must develop out of the requirements of the parties who appear before it.

The National Railroad Adjustment Board and the Criticisms of the National Mediation Board

The Railway Labor Act, as amended, does not give the National Mediation Board any authority over the policies, methods, and procedures of the National Railroad Adjustment Board. The National Mediation Board does have certain administrative and "house-keeping" functions in relation to the Adjustment Board; that is, the salaries of the staff of the Adjustment Board are paid by the United States government through the National Mediation Board; the Mediation Board must appoint neutral referees to act in the settlement of disputes when requested by the Adjustment Board; compensation of the referees is fixed and paid by the Mediation Board; and the annual report of the Adjustment Board is made jointly with the annual report of the National Mediation Board. Otherwise the two agencies are completely separate and independent of one another.

When the National Railroad Adjustment Board began operation in the fall of 1934, it inherited a considerable back-log of deadlocked cases which had been accumulated by the regional boards created by the Railway Labor Act of 1926. Of these deadlocked cases, approximately 600 came within the

jurisdiction of the First Division, which thus began its work with a heavy burden of unadjusted disputes.²⁴ During the years since 1934, this Division has received approximately four times as many cases as all of the other divisions combined and gradually a back-log of unadjusted disputes has developed which is roughly equal to a full three years work. For example, during the fiscal year ending June 30, 1952, the First Division received 2,027 new cases and disposed of 1,313 cases. At the end of the year there were 4,186 disputes on hand awaiting disposition by the Division.²⁵ In other words, during the year under consideration, the First Division received more than 50 per cent more cases than it disposed of, and at the close of the year there were more than three times as many cases awaiting disposition than had been handled during the year.

This situation first became disturbing in the years shortly before World War II, but the National Mediation Board, perhaps feeling that the period was abnormal and that the situation would resolve itself upon the return of peace, did not

²⁴Seventeenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1951 (Washington: Government Printing Office, 1952), p. 25.

²⁵Eighteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1952 (Washington: Government Printing Office, 1953), p. 58.

take official notice of the difficulties of the First Division until 1946. In its annual reports since that date, the National Mediation Board has repeatedly called the attention of Congress and of those parties subject to the act to the critical problems faced by the First Division. In language that has been surprisingly forceful, considering the fact that the National Mediation Board has only very limited jurisdiction over the Adjustment Board, it has pointed out that the labor organizations and the carriers must resolve their difficulties or accept new legislation by Congress modifying the methods and procedures of the Board.

In its annual report for 1946, the National Mediation Board discussed the developments before the First Division in the following manner:²⁶

Unfortunately, the First Division, which is called upon to handle more than four times the number of cases disposed of by the other three divisions combined, has been unable for a number of years to keep current their docket of cases. During the past year the large backlog of pending disputes awaiting consideration by the First Division has delayed making awards on cases currently filed. This has caused some of the transportation organizations either to withdraw pending cases or decline to present new ones to this division, with the view of disposing of them in further direct negotiations When such negotiations fail, strike votes are sometimes spread, thereby creating a labor emergency In such cases the Mediation Board, in its effort to avoid

²⁶ Twelfth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1946 (Washington: Government Printing Office, 1947), p. 9.

interruption to commerce, proffers its mediatory services, and has had some success in adjusting the disputes.

In five instances during the current year failure to secure complete settlements in direct negotiations between the parties or through mediation, resulted in renewal of strike threats and the appointment of emergency boards by the President to investigate and report to him Such emergency boards frequently bring about settlements of the disputes; however, this extraordinary procedure has caused emergency boards to point out that employee organizations should not resort to the use of a strike ballot to create an emergency, the effect of which violated those provisions to the act designed to handle grievances and interpretations of existing agreements

The Mediation Board believes that representatives of the carriers and the employees should by mutual agreement make a determined effort to speed up the settlement of disputes referable to the First Division, preferably through permissible improved procedures, but, if necessary, through the presentation to Congress of agreed-upon proposals for changes in the act.

In its annual report the following year, the National Mediation Board repeated its warnings and pointed out that time spent by the Board in attempting to mediate disputes which should be handled by the National Railroad Adjustment Board was at the expense of regular mediation cases. Then the Mediation Board added:²⁷

The situation which prevents the First Division from functioning in a manner contemplated by the law reflects an excessively large number of disputes which are not being settled on the individual railroads.

²⁷ Thirteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1947 (Washington: Government Printing Office, 1948), pp. 5-6.

This is a problem which addresses itself to the carrier managements and the brotherhood representatives on the railroads where failure to effect settlements allows an excessive number of unsettled disputes to accumulate. More diligence and flexibility of attitudes will result in fewer unsettled disputes to refer to the First Division. On too many carriers the First Division is looked upon as a substitute for settling disputes on the property rather than as a supplemental procedure.

In addition, the carriers and the brotherhoods should endeavor to agree upon procedural changes in the work of the First Division as a means of expediting settlement.

The Mediation Board considers the inability of the First Division to keep abreast of its work to be one of the most serious administrative deficiencies under the act. The railroads and brotherhoods must exert constant diligent efforts to arrive at a solution of this most pressing problem. If they fail to exert such effort or fail to agree on a workable program to correct the present unhealthy conditions, it appears to be inevitable that the remedy will lie with the Congress.

In spite of the warnings of the National Mediation Board, the situation did not improve during 1948. In that year, the National Mediation Board deemed it necessary to recommend the appointment of four presidential emergency boards to consider disputes regarding grievances which should have been decided by the National Railroad Adjustment Board. One of these controversies ultimately developed into a short strike involving employees of the Southern Pacific Railway Company. Again the National Mediation Board called upon the carriers and the brotherhoods to agree upon needed changes in the procedures of the First Division to promote prompt settlement of disputes.²⁸

²⁸Fourteenth Annual Report of the National Mediation Board Including the Report of the National Adjustment Board

The repeated recommendations of the National Mediation Board apparently were heeded in 1949. On May 19, 1949, following a series of conferences between the chief executive officers of the five train and engine service brotherhoods and representatives of virtually all of the Class I carriers, two agreements were executed. One of these agreements provided for the revision of the rules of procedure regarding the manner in which submissions were to be prepared and submitted to the First Division. The other agreement provided for the creation of two supplemental boards of adjustment consisting of four men, each with authority to consider cases assigned to them by the First Division.²⁹

All was not well, however, as an eight day strike occurred on the Wabash Railroad as a result of some 1,600 unadjusted operational grievances which had accumulated between 1944 and 1948. This strike occurred in spite of the best efforts of a Presidential Emergency Board.

The National Mediation Board appeared to be encouraged by the agreements which had been executed by the carriers and the labor organizations, but it made two additional

for the Fiscal Year Ended June 30, 1948 (Washington: Government Printing Office, 1948), pp. 9-11.

²⁹Fifteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1949 (Washington: Government Printing Office, 1949), pp. 11-14.

recommendations to expedite the settlement of cases before the First Division. The Board stated:³⁰

As another means of achieving a current case status for the First Division, it has been suggested that a panel of permanent referees be established with a tenure of office of such duration as to permit a thorough study and understanding of the nature and type of disputes coming before the Board and thereby create, by their awards, a series of precedents for future guidance. Under the present system, there is a constant flow of new men serving as referees, none of whom under the law, can be associated with railroads or organizations, and hence their familiarity with labor practices in the railroad industry is necessarily limited. It cannot be emphasized too strongly, however, that unless procedures succeed in effecting systematic peaceful disposal of such cases the entire structure of the Railway Labor Act is placed in jeopardy.

One of the most effective procedures which has evolved in the handling of such grievance dockets by direct negotiation or mediation is agreement of the parties to submit their docket of grievances to a special adjustment board or a single arbitrator. This, after all, is an adoption of the adjustment function of the First Division and assures expeditious handling. During the past year such an arrangement was agreed to in direct negotiations on the Erie Railroad. That it proved a successful procedure is indicated by the fact that a similar procedure was later agreed to by the same carrier on another docket of grievances. The Board has been able to effect settlement procedures of this kind through mediation, one of which involved a threatened strike of pullman conductors nationally.

The two supplemental boards which were organized in 1949 by agreement of the labor organizations and the carriers

³⁰Ibid.

did not really begin to function effectively until January, 1950, because of a delay in securing the necessary funds from Congressional appropriations. However, the cases disposed of by the First Division increased from 731 in 1949 to 1,438 in 1950, a gain of almost 100 per cent. Yet, as the Division docketed 1,766 new cases during the year, the backlog of cases increased from 2,842 as of July 1, 1949 to 3,170 as of June 30, 1950. Based upon the number of cases disposed of during 1950, this backlog of cases represented more than two full years work for the First Division.

Foreseeing this delay, some of the labor organizations continued to withdraw cases pending before the First Division and resorted to other methods to obtain settlement. Actions of this sort greatly increased the work of the National Mediation Board and six of the eleven emergency boards appointed by the President during the year were appointed to consider disputes which had developed in this manner.³¹

In addition, one of the "most costly strikes in the history of American railroading" resulted from one of these disputes. This strike involved the Missouri Pacific Railroad and continued for a period of 45 days. The Presidential Emergency Board which was appointed tried in vain to secure

³¹Sixteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1950 (Washington: Government Printing Office, 1950), pp. 23-26.

acceptance of procedures for settlement of the dispute, but the strike continued until finally the parties were able to settle their differences by direct negotiations. The Emergency Board, in commenting on the attitude of the parties, stated:³²

It seems inconceivable to us that a coercive strike should occur on one of the Nation's major transportation systems, with all of the losses and hardships that would follow, in view of the fact that the Railway Labor Act provides an orderly, efficient and complete remedy for the fair and just settlement of the matters in the dispute. Grievances of the character here under discussion are so numerous and of such frequent occurrence on all railroads that the general adoption of the policy pursued by the organizations in this case would soon result in the complete nullification of the Railway Labor Act. We cannot bring ourselves to believe that these parties are ready to assume the responsibility of sponsoring such a program.

For the fifth consecutive year, the National Mediation Board called upon the carriers and the labor organizations to devise methods and means for reducing the number of cases coming before the First Division, and for expediting the consideration of pending disputes. Once again, the National Mediation Board suggested a conference of the top executives of the carriers and of the operating brotherhoods to consider the establishment of additional supplemental boards and the revision of the rules of procedure before the First Division.

³²Ibid., p. 25.

During 1951, the two supplemental boards of adjustment which began functioning in 1950 were able to dispose of 456 cases. One of these boards handles disputes concerning engineers and firemen, while the other considered disputes originating with the conductors and trainmen. Thus, the work load of the First Division was reduced to some extent, but it had 3,472 cases on hand and pending at the end of the year, which represented more than three full years work. In addition, two special adjustment and arbitration boards were set up on the lines of two carriers to dispose of claims and grievances. These boards settled approximately 123 cases which normally would have gone before the First Division.

The National Mediation Board found that its work in mediating disputes which should have gone before the First Division was substantially reduced during 1951. This was accounted for by the fact that the carriers had been under army control since government seizure of the railways on August 25, 1950, making it impractical for the organizations to set strike dates on grievances and thus force mediation proceedings. The practice of submitting claims and grievances to special boards of adjustment operating on the lines of the individual carriers also was helpful.³³

³³Seventeenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1951 (Washington: Government Printing Office, 1952), pp. 24-26.

The most noteworthy development during 1952 in relation to the National Railroad Adjustment Board was the creation of eleven additional special adjustment boards. These boards disposed of 1,605 cases which normally would have gone before the First Division.³⁴ At the end of the fiscal year, additional special boards were being considered. Yet the basic problems of the First Division have not been solved. Its procedures remain virtually the same and at the end of the year, 4,186 cases remained for consideration and decision.

Other Criticisms of the National Railroad Adjustment Board

The National Mediation Board has not been the only critic of the National Railroad Adjustment Board. From time to time, other authorities and students of railway labor problems have considered the practices and procedures of the Adjustment Board and have made critical recommendations. Most students of the problems of the National Railroad Adjustment Board are agreed that the basic concept upon which the Adjustment Board is founded is not invalid. That is, they conclude that some sort of board representing both the carriers and the labor organizations should consider and render decisions in reference to grievances and the interpretation or application

³⁴Eighteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1952 (Washington: Government Printing Office, 1953), pp. 17-18.

of working agreements. Those criticisms and suggested methods of improvement that have been made are not directed at the elimination of the National Railroad Adjustment Board, but at correcting defects and inequities which have become apparent.

It has been suggested by one authority that time limits be established within which claims must be filed as the present law does not contain a time-limit.³⁵ A dispute may be submitted to the Board even though the basis of the dispute arose several years previously. In some cases, this has resulted in the carrier making back payments for wages or other types of payment for five or six years into the past. This may unjustly penalize the carrier when the award is made on the basis of some recent precedent in disregard of previous local practice or when a rule is given a new interpretation. On the other hand, the deliberate violation of a contract by the carrier may have occurred in an attempt to save money at the expense of the employee. In such a case, there would be no justification in barring the employee from filing claim for a breach of contract that occurred several years before. It is suggested that the law might be amended so as to set a "fairly short" time limit on these cases, giving the Adjustment

³⁵See Lloyd K. Garrison, "The National Railroad Adjustment Board: A Unique Administrative Agency," The Yale Law Journal, Vol. 46 (February, 1937), p. 596.

Board authority to waive the time limit when the contract violation was shown to be deliberate.

Another matter that has been the source of much difficulty has been the filing of ex parte submissions. In these cases, the carrier and the union submit their presentations independently. The claim of the labor organization is submitted to the Adjustment Board together with a statement of the facts in the case. The case is docketed by the respective division and the carrier is notified that a claim has been filed and is requested to submit a statement of its position in the dispute. In some instances, this procedure has resulted in the respective positions of the parties being scarcely intelligible, and since the hearings before the division authorize amplification only of the previous statements of the parties, the awards of the division may be made without proper and full information as to the facts in the case. It is suggested that this procedure be modified by giving the carrier a copy of the union's submission to use in its presentation of a reply, and that the union then be given an opportunity to reply in a written statement to the carrier's answer. This would serve to join the issues in the the dispute more clearly and exactly than under the prevailing method.³⁶

³⁶ Ibid., pp. 596-597. In the writer's opinion, this criticism is not valid if the provisions of the statute have

It has also been suggested that the appointment of individual referees for the consideration of a group of deadlocked cases has certain disadvantages. The statute requires that the neutral party appointed as a referee have no connections with or interest in either the carriers or the labor organizations. This means that a referee sits with a division without any practical railroad experience to guide him and that the customs, habits, and language of railroading are completely unfamiliar. In addition, the referee has no fellow-judges to consult with and, since the division is already deadlocked on the matter in question, the division members are of little aid. A referee, in such a situation, can be guilty of serious errors in judgement and his decision may not be one that an experienced person would make. Once the awards for the cases under consideration are made, it is probable that he will not be reappointed to the division with which he served because either the labor members, the carrier members, or both would object. The remedy suggested for this difficult situation is the appointment of a full-time group of salaried referees with staggered terms of office. Each of these referees would sit with the various divisions as their

been complied with. All disputes must be considered in conference between the parties prior to submission to the Adjustment Board. How could one party be unfamiliar with the allegations and arguments of the other party if the law has not been disregarded?

services were required and would have the benefit of the experience and judgement of the other referees in those cases which were found difficult to decide independently. Eventually, it would be hoped, each of the referees would acquire experience and would become expert in the functions of his office.³⁷

A suggestion that is similar in some respects to the appointment of a full-time group of referees to aid in the disposition of disputes is the establishment of a special tribunal to decide those cases which come within the jurisdiction of the National Railroad Adjustment Board. Those who support this view maintain that the Adjustment Board "as presently constituted is unfit to deal adequately with many types of disputes" and that the four divisions "settle cases by compromise rather than on the merits, and that many of the deadlocks are resolved by inexperienced referees." It is asserted that the present structure of the National Railroad Adjustment Board "limits claimants to those who can obtain representation by their bargaining agent, and favors the represented employees in treating inter-employee disputes."³⁸

³⁷ Ibid., pp. 593-596. Also see H. R. Northrup and M. L. Kahn, "Railroad Grievance Machinery: A Critical Analysis," Industrial and Labor Relations Review, Vol. 5 (April, 1952), p. 377 and "Railroad Labor Disputes and the National Railroad Adjustment Board," The University of Chicago Law Review, Vol. 18 (Winter, 1951), p. 310.

³⁸ "Railroad Labor Disputes and the National Railroad Adjustment Board," The University of Chicago Law Review, Vol. 18 (Winter, 1951), pp. 320-321.

In further support of this position, it is maintained that:³⁹

Uniformity and fairness could both be achieved . . . were the NRAB reconstituted as an impartial tribunal. It could combine the procedural and adjudicative advantages of a court with the specialized knowledge of an administrative agency. It could provide a hearing for third parties and accept inter-employee disputes without upsetting the balance of interests among its members. It could follow precedents and render consistent interpretations, and it could decide all the cases on their merits. It could dispense with the present time-consuming practice of rearguing deadlocked cases before referees. The carrier members have always favored such a tribunal, but the labor members are opposed. One reason for their opposition is clear--under the present set-up, the unions they represent enjoy important advantages over competing unions. But the interest of railway labor as a whole must lie with an impartial administration of collective bargaining agreements rather than with a system which operates to the advantage of vested union interests.

Another recommendation which is predicated upon the continued existence of the National Railroad Adjustment Board in substantially its present form is the writing of reasoned opinions in the rendition of an award. All of the divisions except the First write opinions which purport to explain the basis upon which awards are made, but the opinions of the Second, Third, and Fourth Divisions are not always adequate for a thorough understanding of the case. As for the First Division, it makes no pretense at writing an opinion, but simply states the pertinent facts in the case together with the award. The carrier members in all divisions write dissenting

³⁹Ibid.

opinions in important cases, but the labor members do not normally write formal dissents. For this reason, many cases which might establish precedents and serve as guides in subsequent disputes cannot be used for this purpose. A referee, in searching for precedents in a deadlocked case, is forced to examine the records of cases which the parties have referred to and frequently finds that these records are not adequate. Accordingly, it is suggested that all divisions adopt the policy of preparing opinions in connection with their awards which set forth the reasoning and the principles followed in making the decision.⁴⁰

There are two types of situations which may develop under the present practices and policies of the Adjustment Board and lead to difficulties for which no apparent solution exists. One of these difficulties originates when an individual employee attempts to bring a claim before the Adjustment Board. Some authorities maintain that the Railway Labor Act gives the individual employee the right to present a claim before the Board, but the labor members have consistently succeeded in preventing the consideration of petitions of this sort unless the individual is represented by his bargaining agent. The effect of this action has been to exclude dissident members of a union, members of a minority union, or non-union members from access to the Adjustment Board unless the authorized

⁴⁰H. R. Northrup and M. L. Kahn, op. cit., pp. 377-378.

bargaining agent is willing to represent them. In this way, the bargaining agent becomes the sole means for obtaining consideration of disputes before the Adjustment Board and the unions which are bargaining agents have used this privilege to consolidate their position over competing unions.⁴¹ At the same time, this action by the labor members of the Adjustment Board has deprived individual employees of a right apparently extended to them by the Railway Labor Act.

The other difficulty arises in relation to what might be termed jurisdictional disputes. The Railway Labor Act does not give the National Railroad Adjustment Board jurisdiction over this type of dispute as it is confined to the consideration of "disputes between an employee or group of employees and a carrier or carriers," but the Board disposes of certain types of these disputes in a manner that some authorities consider inequitable.⁴²

If a dispute arises as to seniority rights, one individual or group is asserting preference over another party or parties under an existing contract, and the union bargaining representative is, in effect, petitioning for one individual

⁴¹See "Railroad Labor Disputes and the National Railroad Adjustment Board," The University of Chicago Law Review, No. 18 (Winter, 1951), pp. 311-312 and H. R. Northrup and M. L. Kahn, op. cit., pp. 370-372.

⁴²See "Railroad Labor Disputes and the National Railroad Adjustment Board," The University of Chicago Law Review, Vol. 18 (Winter, 1951), pp. 313-317.

or group to be given preference over the other party or parties concerned. However, those persons who will be affected by the decision of the Board, perhaps adversely, will not be notified or heard by the Board, due to the position taken by the labor members. The labor members have consistently maintained that third parties may not intervene in a dispute.

A similar situation, in some respects, arises when either a union or non-union employee has a grievance against the bargaining agent. The employee does not have a means of submitting his dispute to the Board and cannot obtain relief. Negroes, for example, cannot join many of the national unions and are sometimes discriminated against by the authorized bargaining representative for their class or craft, while the discrimination of unions against their own members is not unknown.⁴³

Summary

A consideration of the history of the National Railroad Adjustment Board indicates that it has not been too successful, especially in recent years. At the present time, the volume of cases coming before the several divisions of the Board and the number of cases awaiting disposition is unprecedented. It would appear that the Board cannot resolve the difficulties with which it is now confronted without certain

⁴³Ibid., p. 315.

changes in its practices and policies, and the parties who are directly concerned, as well as disinterested students, have made various recommendations to alleviate these difficulties. However, in considering these criticisms and recommendations, it should be remembered that the function of the Adjustment Board is to resolve grievances arising from the interpretation or application of current working agreements and its awards must be made in accordance with these agreements. If a rule of the working agreement clearly inflicts an economic hardship upon one of the parties to the agreement, the remedy to this difficulty does not lie with the Adjustment Board and can be resolved only by revision of the work rule in question through the collective bargaining process.⁴⁴

Those recommendations and criticisms which have been directed at the practices and policies of the Adjustment Board may logically be summarized and evaluated in reference to the procedure ordinarily followed in the settlement of a grievance. When a dispute develops between a carrier and its employees, it is first to be considered on the carrier system and if it cannot be adjusted, the grievance may then be referred to the Adjustment Board. The carriers maintain that when an ex parte submission is made, they may not be fully informed as to the

⁴⁴So-called "make-work" rules and rules which, in their effect, may require the payment of wages for work not performed are in this category.

facts of the dispute and the position of the employees. This criticism obviously cannot be valid if the statute has been complied with and the grievance has received full consideration on the carrier system.

After the dispute has been submitted to the Adjustment Board, the law provides that the parties to the controversy may present their positions "either in person, by counsel, or by representative." However, the labor members of the Board have consistently refused to permit unrepresented employees to appear, and they have also refused to authorize the intervention of interested third parties. The position of the labor members of the Board in this situation appears not only to be unreasonable but in violation of the clear intent of the statute in so far as individual employee testimony before the Board is concerned. It is believed that the statute should be amended to authorize specifically the intervention of directly interested third parties and the submission of testimony by an unrepresented employee. However, with the enactment of the "union shop" authorization during 1951, the importance of this criticism was substantially diminished. This proposal would have its sharpest impact on those carrier systems where the "open shop" prevails and where new employees still had not joined the certified labor organization under the terms of a "union shop" agreement. Today virtually all operating and non-operating employees belong to duly authorized

labor organizations and the elected representatives of these groups should act as the employees' representatives before the Board.

Another practice of the Board that is sharply criticized by the carriers is the consideration of claims originating several years in the past. It would appear that a reasonable statutory limitation should be imposed upon such claims, permanently barring them after a period of perhaps one year from the date when the cause of such action arose.

After the Adjustment Board has heard a dispute, if a decision cannot be reached and the Board deadlocks on the question, a neutral referee may be selected by the Board or appointed by the National Mediation Board. At times, inexperienced referees have made ill-considered awards and on many occasions, the appointment of a competent referee has been difficult. The solution to this problem appears to be the creation of an impartial permanent referee panel to sit with the several divisions of the Board and, if needed, to aid the Board in reaching a decision. This, in effect, amounts to arbitration of the dispute which has also been recommended. Perhaps both a permanent referee panel and an arbitration panel would be desirable. The issue might be submitted to an arbitration panel as the final and binding step in the grievance process.

It has also been suggested that the divisions should

be required to prepare written opinions supporting their reasoning in the disposition of these disputes. It is argued that these decisions might then act as precedents for the guidance of the Adjustment Board in future cases. Obviously, such opinions would be helpful but this suggestion appears to be completely subject to the discretion of the individual members of the Board. If such opinions are to be of value, they must be prepared with the full cooperation of the Board.

Finally, the National Mediation Board has urged that additional special boards of adjustment be created to aid the First Division in the disposition of its back-log of cases. Several special boards have already been established and others are now being considered. This action is to be approved as it not only tends to relieve the First Division but it also serves to return these grievances to the individual carrier systems where such disputes should be settled if possible.

It is believed that the recommendations which have been presented above have merit. Yet it should be remembered that, regardless of the form that the National Railroad Adjustment Board may take as a result of a Congressional directive or otherwise, if the basic purposes of the Board remain unchanged, it cannot be successful unless both labor and management concur in its procedures and mutually cooperate to achieve the prompt and orderly settlement of such disputes.

CHAPTER IV

THE NATIONAL MEDIATION BOARD

The National Mediation Board, as does the National Railroad Adjustment Board, represents the continued effort of Congress to develop methods and machinery for the settlement of certain types of railroad labor disputes. The origin of the National Mediation Board may be traced back to the Erdman Act of 1898, which established a Congressional policy of mediation. The Erdman Act was followed by the Newlands Act of 1913 which created an agency known as the United States Board of Mediation and Conciliation. Under this statute, a great deal of reliance was placed upon mediation for the settlement of disputes.

The United States Board of Mediation and Conciliation was supplanted by the United States Railroad Labor Board, under the authority of Title III of the Transportation Act of 1920. The Railroad Labor Board may be thought of as a reversion to the principles of the original Arbitration Act of 1888. Under this legislation, mediation was abandoned and hearings and investigations of disputes by the Board were substituted. The Board of Mediation, the predecessor of the present National Mediation Board, replaced the United States Railroad Labor Board in 1926, reestablishing mediation as the basic policy of Congress in the settlement of railway labor

disputes. In June, 1934, Congress established the National Mediation Board which replaced the Board of Mediation, and it has served continuously to the present time.

The Organization and Duties of the National Mediation Board

Section 4 of the Railway Labor Act provides for the creation of an independent agency in the executive branch of the government to be known as the "National Mediation Board." The Board is composed of three members appointed by the President, subject to the advice and consent of the Senate, with not more than two members being from the same political party. The terms of office are for three years, except in the case of a vacancy due to an unexpired term, in which case the newly appointed member serves only for the unexpired term of his predecessor. The terms of office were staggered at the time of original appointment so that the term of one member expires on January 31 of each year. The members of the Board receive a salary of \$10,000 per year together with certain authorized traveling and subsistence allowances. No person who is in the employment of a carrier or a labor organization may become a member of the Board and any member may be removed by the President for inefficiency, neglect of duty, or ineligibility.

Each year the Board must designate a chairman from its members. He is responsible for the administration of its

affairs, although in practice an appointed secretary carries out these activities subject to the direction of the Board. In addition to the office and clerical staff, the Board has a staff of about 30 trained mediators, subject to the civil service laws, who spend most of their time in field duty.

The National Mediation Board is authorized to assign any of its work to an individual member of the Board or to any employee or group of employees. Any individual who is given such an assignment and acts in conformity with the assignment, has all of the power and authority of the Board and may act on behalf of the entire Board.

The principal functions and duties of the National Mediation Board are set forth in Section 5 of the Act which provides:

The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required

action (except as provided in paragraph third of this section and in sec. 10 of this act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for 30 days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

The National Mediation Board has other duties set forth in various sections of the Act. If a dispute is submitted to an arbitration board and it is found impossible to name all of the arbitrators to the board due to the inability of the arbitrators selected by the parties to name the remaining arbitrator or arbitrators required, the National Mediation Board must make the appointment. The Board, in naming the arbitrators, must appoint only those who are "wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration." If any arbitrator is appointed who proves not to be disinterested or impartial, the Board must "upon proper investigation and presentation of facts . . . promptly remove such an arbitrator."

Under Section 2 of the Act, it is the duty of the National Mediation Board to determine the authorized representatives of the employees. If a dispute arises among a

carrier's employees as to who are the representatives of the group, upon the written request of either party, the Board must investigate the dispute and within 30 days certify in writing to both parties and to the carrier the name of the duly authorized representative. In such an investigation, the Board is authorized "to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence or coercion exercised by the carrier."

Emergency boards are appointed under Section 10 of the Act. If a dispute is not settled by mediation or by arbitration and if all of the processes of the Act have been utilized and have failed, an emergency board may be appointed. If, in the judgement of the National Mediation Board a dispute threatens to "substantially . . . interrupt commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute." If such a board is appointed, its members may not have any interests of any kind in any organization of employees or any carrier. Compensation of the members of the Board are fixed by the President. A separate emergency board must be

created for each dispute certified to the President and the Board's report must be submitted within thirty days of its creation.

The remaining important duty of the National Mediation Board, other than the appointment of neutral referees to serve with the several divisions of the National Railroad Adjustment Board to decide deadlocked cases as discussed in a previous chapter, is the interpretation of mediated agreements. Section 5, paragraph 2, provides:

In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

The National Mediation Board has interpreted this section of the statute as a requirement to consider only the specific terms of the mediated agreement and not matters incidental or corollary to the agreement. The Board will render an opinion as to the specific meaning of a phrase, clause, or paragraph, but will not give an opinion as to how the agreement is to be applied to an actual situation. This position has been taken in order to avoid confusion with the responsibilities of the National Railroad Adjustment Board which has the duty of determining the proper meaning or

application of the working agreement in real situations.¹

By way of summarizing the duties of the Board, the National Mediation Board has classified the disputes subject to its jurisdiction into three general groups: disputes between carriers and employees regarding changes in rates of pay, rules, or working conditions, which are designated as "mediation" cases; disputes among employees as to who shall be their duly designated and authorized representatives, which are termed "representation" cases; and disputes as to the interpretation or the application of agreements reached by mediation. Such controversies are called "interpretation" cases.²

The Procedures and Problems of Mediation

As previously indicated, Section 5 of the Railway Labor Act provides that the National Mediation Board shall mediate those disputes arising from changes in rates of pay, rules, or working conditions which cannot be adjusted in conferences between the parties, as well as any other dispute which is not referable to the National Railroad Adjustment Board. In addition, the National Mediation Board may extend its services and offer mediation at any time when it finds

¹See Fifteen Years Under the Railway Labor Act, Amended and the National Mediation Board, 1934-1949 (Washington: Government Printing Office, 1950), p. 21.

²Ibid., p. 9.

that a railroad labor emergency exists, regardless of the agency that has primary jurisdiction. The Board considers the performance of the duties prescribed by this section of the statute to be its most important task, and a great deal of the time and energy of both the Board and its staff of mediators is expended in an effort to resolve disputes of this type.

Mediation services may be obtained by either or both parties to a dispute by making application directly to the Board upon copies of a specified form. If such a request is made, the application should specify "the nature of the dispute, the number of employees involved, name of the carrier and . . . of the labor organization, date of agreement between the parties, and the . . . date of final conference" The request should be signed by the chief of the labor organization or by the highest carrier official authorized to negotiate labor disputes, depending upon which party files the application. Upon receipt of the request, it is given a docket number and, after a preliminary investigation is made, the dispute is assigned for mediation to a member of the Board or to the mediation staff.³

The statute makes it the primary duty of the carriers and their employees to "exert every reasonable effort to make

³Ibid., p. 27.

and maintain agreements concerning rates of pay, rules, and working conditions." All disputes, regardless of their nature, must be considered and decided, if possible, in conference between the parties to the dispute. The services of the National Mediation Board are to be invoked only after direct negotiations between the parties have exhausted every possibility of effecting settlement. If a settlement cannot be reached in this manner, mediation by the Board constitutes an additional step in the negotiations already started by the parties. The Mediation Board takes the position, therefore, that its services should operate "to promote and extend the voluntary and democratic process of adjusting differences over labor standards by conference between and with the parties directly concerned."⁴

In disputes subject to mediation, procedural questions have not developed to trouble the Board as they have in representation disputes. In general, both the carriers and the labor organizations have cooperated with the Board in its effort to mediate disputes and, over a period of years, the Board has developed methods of procedure which are well known to the parties and are generally acceptable.

This is not to say that the Board has not encountered

⁴Ibid., p. 10.

problems of various kinds in its mediatory efforts. One of the early difficulties faced by the Board was the unwillingness of the parties, after a dispute had been mediated, to reduce the new agreement to writing. As the law provides that it is the duty of the parties to make and maintain agreements and that "every carrier shall file with the Mediation Board a copy of each contract with its employees," the Board has taken the position that all agreements reached under its auspices must be reduced to writing. This position is entirely reasonable since the failure to execute written contracts can lead to the very difficulties which the Act intends to be avoided. This problem has not been serious in recent years as both parties have come to realize the advantages of written agreements.⁵

Another problem encountered by the Board has been the failure of the parties to exhaust the possibilities of direct negotiations. In some cases, the Mediation Board has been requested to aid in the negotiation of complete agreements; in other cases, it was evident that all of the questions involved in the dispute had not been the subject of direct negotiations. The Board takes the position that such action violates the primary intention of the law and that efforts at mediation should not be instituted until the parties have

⁵Ibid., p. 11.

exhausted every effort to settle the dispute. In addition, once mediation is undertaken by the Board, the statute grants to the Mediation Board the responsibility of determining when its mediation efforts have been exhausted. In some instances, work stoppages have occurred or strike dates have been set during the process of mediation. Such action is, of course, in violation of the statute, which provides that even after mediation has ceased, no change of any kind may be made by either party in relation to the matters under dispute for a period of thirty days.⁶

Perhaps the most serious problem that the National Mediation Board has encountered has been the recent tendency on the part of the labor organizations to refuse to submit grievance cases and disputes concerning the interpretation or application of agreements to the appropriate division of the National Railroad Adjustment Board or to withdraw such cases from the Board. The labor organizations have then set strike dates upon these disputes, thus provoking a labor emergency. In some instances, the Mediation Board has been able to mediate the dispute or persuade the parties to submit the dispute to an arbitration board or to a special adjustment board. In other cases, Presidential emergency boards have been appointed to investigate and report upon these

⁶Ibid., p. 12.

controversies and at times these boards have been successful. In other cases, these grievance disputes and disputes in reference to changes in rates of pay, rules, or working conditions have ultimately resulted in government seizure and operation of the railroads.⁷ In any event, the Railway Labor Act does not contemplate such procedure since the National Railroad Adjustment Board is charged with the final disposition of all controversies concerning grievances and the interpretation or application of working agreements.

Mediation cases together with representation cases constitute by far the largest share of the work of the National Mediation Board. As of June 30, 1952, the Board had disposed of 3,910 mediation cases as compared with 2,552 representation cases; a percentage ratio of approximately 61 and 39.⁸

The Procedures and Problems of Representation Disputes

The National Mediation Board has the duty to investigate disputes as to the authorized representative of any craft or class of employees and must certify the duly authorized representative to both the employees and the carrier.

⁷ Ibid., p. 12.

⁸ Eighteenth Annual Report of the National Mediation Board, Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1952 (Washington: Government Printing Office, 1953), p. 30.

This responsibility has given rise to several problems in the past, some of which have been settled by rulings of the courts. Most of these problems have involved the power and the authority of the Board to designate the employees that are eligible to participate in the election of representatives and to prescribe rules to govern the election.

The only substantive rules issued by the Board are those which have been established to implement the procedure for determining employee representatives. To invoke the services of the Mediation Board in such a dispute, an application must be filed accompanied by signed authorization cards from at least a majority of the class or craft concerned. The request must state the name of the craft or class, the name of the organization making the application, the name of the existing authorized representative, if any, and the estimated number of interested employees.⁹

The Board has established still other rules in connection with such disputes. After the application is received, the Board will not authorize an election in the case of an organization already having an authorized representative, unless at least a majority of the craft or class have signed authorization cards which have been checked and verified as to date, signature, and employment status. If the employees

⁹Fifteen Years Under the Railway Labor Act, Amended,
pp. 27-28.

involved in the dispute do not have an authorized representative, proved authorization cards from at least 35 per cent of the craft or class must be submitted before the Board will authorize a representation election. The authorization cards must be signed and dated in the employee's own handwriting and authorization cards will not be accepted by the Board which have been dated one year or more prior to the date of application. The Board has ruled that dismissed employees are eligible to vote in representation elections under certain circumstances. If the employee has requested reinstatement charging wrongful dismissal and the request is pending before the proper authorities, he may vote. An employee whose guilt has been determined and who is requesting reinstatement on a leniency basis may not vote.

In the event that any individual or organization of any craft or class does not receive a majority of the legal votes cast in an election, or in the event of a tie, the Board may authorize a run-off election if a written request is made within ten days by any individual or organization entitled to appear on the run-off ballot. The names of the two individuals or organizations receiving the largest number of votes in the previous election are placed by the Board on the run-off ballot and voting is limited to these two parties. The Board has also ruled that it will not begin the investigation of a new representation dispute within two years of

a previous investigation and certification of an authorized representative except in "unusual or extraordinary circumstances."¹⁰

If a dispute arises among contesting parties or organizations as to the employees eligible to vote in a given election, the Board may, in its own discretion, hold formal hearings to determine the craft or class of employees eligible to participate. If such a hearing is held, all parties, including the carrier, may appear and present their views and arguments. When the hearings are concluded, the Board considers the evidence that has been submitted and makes a determination as to the class or craft of employees eligible to vote in the election in question.¹¹

The National Mediation Board takes the position that all of the substantive rules that it has established in relation to representation disputes are to be "liberally construed to effectuate the purposes of provisions of the act." In addition, the Board may amend or rescind any rule that it has established if the rule hinders the effective application of the statute. Any interested person who desires that a new rule be issued or that an existing rule be amended or rescinded may petition the Board for such action. If such a petition is filed, the Board may hold hearings or consider the request

¹⁰ Ibid., pp. 29-31.

¹¹ Ibid., pp. 28-29.

in other ways. If the petition is denied in whole or in part, notice is given of the denial together with an explanatory statement as to the basis of the denial.¹²

In addition to the substantive rules which the Board has established to aid it in representation disputes, the Board has developed a group of guiding policies as a result of certain problems which have been encountered. One of the problems which has recurred repeatedly is whether a majority of the employees eligible to vote is necessary for the selection of a representative or whether a majority of the votes actually cast is sufficient for a valid election. Early in its history, the Board ruled that a representative could not be certified unless he received a majority vote from all those eligible to vote rather than a majority of the votes cast. However, if the parties to the dispute agreed that they would be bound by a majority of the votes cast, the Board was willing to make a certification on this basis. This policy was challenged in the courts and on the basis of the court ruling, the Board adopted the policy of requiring a majority of the votes actually cast for the certification of a representative.¹³ This change in policy has been challenged several times in court cases and each time the Board has been upheld. In 1947, the Board obtained a

¹²Ibid., p. 31.

¹³300 U. S. 515.

ruling from the Attorney General in reviewing its policy on this question in which it was stated:¹⁴

The National Mediation Board has the power to certify a representative which receives a majority of the votes cast at an election despite the fact that less than a majority of those eligible to vote participated in the election. While the National Mediation Board has this power, it need not exercise it automatically upon finding that a majority of those who participated were in favor of a particular representative. In the exercise of its discretion in these matters, the Board may, for example, find it advisable to limit the application of the principle to cases in which the participation in the election is sufficiently substantial and representative to warrant the assumption that those who do not participate assent to the expressed will of the majority of those voting.

This opinion has now been generally accepted.

Another problem which has confronted the National Mediation Board is the determination of the particular occupations to be included within a class or craft in a representation election. The Railway Labor Act does not define a "craft or class" and the Board has developed certain policies to be followed when faced with such a question. In general, the Board has given a great deal of weight to the previous practices of the employees in grouping themselves for bargaining purposes. Other factors which the Board takes into consideration are the duties, functions, and responsibilities of the employee; the nature of their work and its relationship to

¹⁴Fifteen Years Under the Railway Labor Act, Amended,
p. 15.

other work; and the effectiveness of past collective-bargaining arrangements. The Board has frequently been confronted with pressure to split groups of employees into more and smaller groups, each group maintaining that it was a separate class or craft. The Board feels that such tendencies threaten the basic purposes of the Railway Labor Act and that such subdivisions interfere with the efficiency of carrier operations. It has adopted the policy, therefore, of avoiding the unnecessary division of craft or classes and has followed the practice of maintaining the customary groups of employees, if at all possible. This policy has been closely adhered to when a division of a craft or class was proposed on the basis of race or color. The Board has insisted that all employees in a single craft or class, regardless of race, color, or creed, must be given the opportunity to vote for those who will represent the entire group.¹⁵

The question as to who is an employee and, therefore, eligible to vote in a representation election has been a source of difficulty. For example, is a person who has been temporarily laid off or furloughed eligible to vote? In these cases, the Board has ruled that such a person is an employee if he remains on the seniority roster and is likely to be

¹⁵ ibid., pp. 17-18. The decisions of the Board through June, 1948, are found in Determinations of Craft or Class of the National Mediation Board, July 1, 1934 - June 30, 1948 (Washington: Government Printing Office, 1948).

called back to work within a short period of time or if normally he was laid off and reinstated with seasonal fluctuations of business. If the person was furloughed for such a period of time that his name was removed from the seniority roster, the Board has held that he is not eligible to vote.¹⁶

Another policy of the Board has been established in relation to a change in representation of a group of employees. It has been argued that an agreement executed by a representative is no longer effective after a new representative has been selected by the employees. In such a case, the Board has taken the position that the existing agreement is not altered or changed by a change in representatives. If it is desired to change the agreement, the new representatives must give proper notice as to the desired change and comply with all of the other provisions of the statute.¹⁷

During the 18 year period in which the National Mediation Board has been in operation, 2,552 representation disputes have been considered. These disputes have involved 3,531 different crafts or classes and have affected more than 987,000 employees.¹⁸ The disposition of representation disputes has

¹⁶ Ibid., pp. 18-19.

¹⁷ Ibid., p. 19.

¹⁸ Eighteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1952 (Washington: Government Printing Office, 1953), p. 30.

constituted no small part of the total burden of the National Mediation Board.

The Interpretation of Agreements
Reached Through Mediation

Under Section 5 of the Act, the National Mediation Board has the duty of interpreting the meaning or the application of any agreement reached through its efforts. If such a dispute arises, the Board's interpretation of the agreement may be obtained by a letter of request from either party subject to the agreement and the interpretation must be rendered within thirty days. As previously explained, in order to avoid infringing upon the jurisdiction of the National Railroad Adjustment Board, the Mediation Board has held that this requirement refers only to the meaning of the specific terms of the agreement and that it is not authorized or required to interpret or apply the agreement to the day-to-day problems of the parties. This position has been maintained even though in many instances the Board has assisted in the negotiation of new working agreements or completely revised existing agreements. Throughout the history of the Board, it has been requested to render interpretations in only 22 such cases.¹⁹ Most of these requests were made during the early life of the Board.²⁰

¹⁹Fifteen Years Under the Railway Labor Act, Amended, p. 63.

²⁰Ibid., p. 20.

The Creation of Boards of Arbitration

In the event that the National Mediation Board finds that it is unsuccessful in its efforts to mediate a dispute, it is required by the Act to endeavor to induce the parties to submit the controversy to arbitration. If arbitration is refused by either party or both parties, the Board must notify them that its mediatory efforts have failed and for thirty days following the notification no change may be made by either party in the rates of pay, rules, working conditions, or the established practices in effect prior to the date when the dispute developed. During this period, the parties may agree to arbitrate or an emergency board may be appointed under the provisions of Section 10 of the Act. If the parties agree to arbitration, such an agreement must be executed by the parties in accordance with the detailed requirements of the statute. The National Mediation Board has the responsibility of appointing the arbitrator or arbitrators required by the agreement in the event that the representatives of the carrier and of the labor organization on the arbitration board cannot agree upon the remaining member or members of the board.

The award of an arbitration board provides a definite and legally enforceable decision in relation to the matters under dispute. When the award is made, it must be filed in the clerk's office of the district court named in the

arbitration agreement. If it is not impeached within ten days from the date when the award is filed, the court enters judgement upon the award which then becomes final and binding upon the parties. The award may be attacked only upon the grounds that it does not conform to the substantive requirements of the Act, that the arbitration proceedings did not conform with the Act, that the award was not confined to the questions under consideration in the agreement to arbitrate, or that a member of the board of arbitration was guilty of fraud or corruption in rendering the award.

Even though the Act does not require the parties to agree to submit their differences to arbitration, the National Mediation Board, in urging arbitration, emphasizes the spirit and the intent of the law to settle disputes by peaceful means. The efforts of the National Mediation Board to induce the parties to arbitrate have not been very successful. Apparently, when the parties have been confronted with the alternatives of submitting their differences to arbitration or settling them on a basis of economic strength, they have generally continued with direct negotiations and eventually the dispute has been settled. Such action, of course, is to be approved, but in more recent years some disputes which might have been resolved by boards of arbitration have eventually developed into strikes or labor emergencies with serious consequences. This has been true, even though the arbitration machinery

created by the Act has been used much more extensively in recent years.

During the entire life of the National Mediation Board only 165 agreements to arbitrate have resulted in awards, 155 of them since 1940. Since 1944, an average of 16 disputes each year have been submitted to arbitration--a very small number of cases when compared with the total number of disputes coming before the National Mediation Board during this period. In its Sixth Annual Report, the Board analyzed the results of its arbitration efforts through June 30, 1940, and found that out of 77 cases in which arbitration had been urged, only 10 cases were ultimately settled by arbitration awards. In 58 of these disputes the employees were willing to submit the issues to arbitration while the carriers accepted arbitration in only 29 cases. The carriers refused arbitration in 48 disputes and the employees refused in 16 cases. Both the carriers and the employees were willing to accept arbitration in only 21 cases and in 11 disputes the acceptance was reconsidered and the disputes later resolved either by direct negotiation or further mediation. Thus, in only 10 cases were arbitration boards selected and awards ultimately made.²¹

²¹Sixth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1940 (Washington: Government Printing Office, 1940), p. 28. This is the only analysis that the Board has published in relation to its arbitration efforts but it may be assumed that subsequent experience has been similar.

The Creation of Emergency Boards

In the event that the National Mediation Board is unsuccessful in mediating a dispute and arbitration is refused by either or both parties to the controversy, Section 10 of the Act requires that the Mediation Board shall notify the President if, in the judgement of the Board, the dispute threatens "substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Upon receiving notification, the President may, at his discretion, create an emergency board to investigate and report upon the dispute. Such a board may have any number of members but no member of the board may have any interest of any kind in an organization of employees or a carrier. A separate board is created for each dispute and the report of the board must be submitted within thirty days of the date of its creation. Neither of the parties to the dispute may make any changes in the conditions from which the dispute arose, except by mutual agreement, for a period of thirty days following the submission of the emergency board report to the President.

The findings of such an emergency board are not binding upon the parties to the dispute, but it was the hope of Congress that the investigation of the dispute by the board, with the attendant publicity given the investigation and the board's findings, would mobilize public opinion and bring pressure upon the parties to settle the dispute.

In general, the National Mediation Board has exercised its authority under this section very sparingly. As a matter of policy, the Mediation Board has not notified the President of a developing dispute which threatened to interrupt interstate commerce until the labor organizations have taken a strike vote and the strike date has been announced. In some cases, mediation efforts were continued until it was certain that every possibility of mediation or conciliation had been exhausted, even though a strike date had been set. As a result, emergency boards were appointed only as a last resort and, in general, the findings of such boards were accepted by both labor and management. Through June 30, 1942, only twelve emergency boards had been appointed under the provisions of the Act.

From that date through June 30, 1952, 140 emergency boards have been created, a total of 152 during the entire life of the National Mediation Board. This marked increase in the utilization of the final step in the handling of disputes under the Railway Labor Act occurred for a variety of reasons which will be discussed.

In response to a no-strike pledge given by virtually all of the railway labor organizations, the President of the United States, on May 22, 1942, issued Executive Order No. 9172, which substantially changed the methods and policies which had been followed in the creation of emergency boards.

A portion of the Executive Order reads as follows:²²

Whereas, the national interest demands that for the effective prosecution of the war there shall be no strike votes taken, or dates fixed for the beginning of strikes, or strikes, lock-outs, embargoes put into effect, which would affect the transportation industry covered by the Railway Labor Act.

Now, therefore, by virtue of the authority vested in me by the Constitution and the Statutes of the United States, and in order to adjust the policies and procedures under the said Act to the requirements of the war emergency, it is hereby ordered as follows:

1. There is hereby created, for the duration of the war and six months thereafter, a National Railway Labor Panel of nine members, hereinafter referred to as the Panel, to be appointed by the President, and to be qualified as to membership thereon in the same manner as provided in Section 10 of the Railway Labor Act for membership on emergency boards. The President shall designate a chairman from the members of the Panel and shall fill vacancies thereon as they may occur. The Chairman of the Panel shall receive such compensation, together with necessary traveling expenses, as the President may prescribe. The members of the Panel shall receive necessary travel expenses and subsistence expenses

2. Whenever a dispute between a carrier or carriers and its or their employees concerning changes in rates of pay, rules, or working conditions, or whenever any other dispute not referable to the National Railroad Adjustment Board, is not adjusted or settled . . . the duly designated and authorized representatives of the employees involved in such dispute may, prior to notice by the National Mediation Board to the President of a threatened interruption to commerce, notify the Chairman of the Panel of the failure of the parties to adjust the dispute and of their desire to avoid the taking of a strike vote and the setting of a strike date. If, in the judgement of the Chairman of the Panel, the dispute is such

²²Eighth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1942 (Washington: Government Printing Office, 1942), p. 98.

that if unadjusted, even in the absence of a strike vote, it may interfere with the prosecution of the war, he may thereupon select three members of the Panel to serve as an emergency board to investigate such dispute and to report thereon to the President. Subject to the provisions of Section 10, such board shall have exclusive and final jurisdiction of the dispute and shall make every reasonable effort to settle such dispute.

This Executive Order had two principal effects. If the labor organizations carried a dispute to the Chairman of the National Railway Labor Panel, it completely removed the National Mediation Board from any jurisdiction over the dispute. Also, it was no longer necessary for the membership of a labor organization to vote to strike to obtain consideration of the dispute by an emergency board. The executives of the labor organizations could obtain the appointment of an emergency board simply by notifying the Chairman of the Panel of their desire not to take a strike vote. If, in the judgement of the Chairman, the dispute might hinder the war effort, an emergency board was appointed to investigate and report on the dispute.

Under these provisions, 58 emergency boards were appointed between 1942 and 1947. On August 11, 1947, the National Railway Labor Panel was abolished by Executive Order 9883 with the announcement that the available procedures under the Railway Labor Act appeared "adequate for the

handling and adjustment of such disputes."²³

By 1945, the railway labor organizations again began the practice of taking strike votes and setting strike dates without utilizing the facilities of the National Railway Labor Panel. During that year, 15 emergency boards were appointed under the provisions of Section 10 of the Act, following notification of the President by the National Mediation Board that a labor emergency existed. From 1945 through June 30, 1952, a total of 82 emergency boards have been appointed under the provisions of Section 10. This growing tendency on the part of the labor organizations and of the carriers to exhaust all of the normal procedures of the Railway Labor Act, to place their disputes before emergency boards, in many cases to refuse to abide by the findings of these boards, and eventually to rely upon economic strength or continued negotiations to resolve their difficulties, has been the source of increasing concern to the National Mediation Board.

The Board, in its Fifteenth Annual Report, discussed this situation and warned the parties of the dangers of relying upon government assistance for the settlement of disputes

²³ See the Fourteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1948 (Washington: Government Printing Office, 1948), p. 112, for a copy of Executive Order 9883. Members of the National Railway Labor Panel are listed in the Eleventh Annual Report of the National Mediation Board, pp. 43-44.

after "short-circuiting" direct negotiations, but the position of the Mediation Board was even more forcefully expressed in its Sixteenth Annual Report. In this report, the Board stated:²⁴

Probably the most serious problem confronting this Board in the handling of its mediation duties under the act is that of the concerted or national wage and rules movements on the part of the railroad labor organizations. These movements are customarily participated in by most of the non-operating organizations acting as a unit, and the operating organizations acting either individually or in groups of two or three. These national movements have occurred at fairly regular intervals of approximately 2 years commencing in 1939. All of them have shown a pattern of similarity, consisting of a uniform and national demand on the individual carriers; a perfunctory handling on both sides at the local level; the creation of national or regional carriers' conference committees to meet the organizations on the national level; a breakdown of negotiations at this stage; mediation by the members of the National Mediation Board; inability to secure arbitration agreement; and finally, the setting of national strike dates and the consequent creation of emergency boards under section 10 of the act. In the earlier years, there were two settlements of national movements in mediation. Arbitration was agreed to by both sides in one instance. In all other cases, the disputes went before emergency boards.

As stated, mediation of these national wage and rules movements has in most cases proved unsuccessful. In fact, it has become customary for both carriers and organizations to prepare for the presentation of their cases to emergency boards while mediation is in progress.

While the law does not make it mandatory on either party to accept emergency board recommendations,

²⁴Sixteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1950 (Washington: Government Printing Office, 1950), p. 33.

it most certainly is the spirit and intent of the act that the mobilization of public opinion behind such recommendations will induce the parties to make them effective instruments of subsequent negotiations without carrying the controversy to further stages, possibly resulting in actual work stoppage, which the entire machinery of the act is designed to prevent.

The Board feels that it is its duty to continue to emphasize the necessity for stricter compliance with the obligation laid upon both parties to a controversy by the law to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions. We continue to be confronted with situations where an organization will make request upon a carrier for a complete revision of a working agreement, involving changes in a great many rules. Quite often the carrier will also make counter-proposals for many rules changes. In many instances, the direct negotiations between the parties fail to bring about settlement of a great many of the proposed rules changes and, as a consequence, mediation services are invoked on practically complete revisions of working agreements. It then becomes necessary for the parties to sit down and really negotiate, with the assistance of the mediator, upon a large number of items which should normally be settled in direct conferences prior to mediation. Such situations often require the services of a mediator for months.

Most certainly, when the Railway Labor Act was passed in 1926, it was the feeling and intent of all concerned that section 10, under which emergency boards are created by the President, would be used only in major disputes which actually threatened an interruption in interstate commerce. It was contemplated that lesser disputes, including revisions of working agreements, would be settled through the process of genuine collective bargaining, with the residue of unsettled issues left to be adjusted through the process of mediation and arbitration. Since the recommendations of emergency boards are not final and binding on either party, we find here a situation similar to the experience in recent years with emergency board recommendations on the national wage and rules cases. The recommendations become the basis for further bargaining between the parties as to their application. We cannot too

strongly stress the need for a return to the practice of honest and sincere collective bargaining between the parties and the reduction of issues between them to a minimum before either side seeks mediation services, and the functioning of subsequent adjustment procedures under the act.

The experiences of the National Mediation Board during 1951, in attempting to mediate those disputes originating as national wage or rule movements and being forced eventually to recommend the appointment of emergency boards whose findings were not accepted by the parties, caused the Board to state:²⁵

As noted in the sixteenth annual report of this Board, for a good many years it has not been possible to settle disputes handled as concerted movements in mediation. The initial handling of movements of this character involving wage and rule changes has become rather perfunctory on the individual properties. All concerned anticipate the formation of regional conference committees by the carriers, a period of time spent in mediation efforts by the Board members, a proffer of arbitration which is rejected by one side or the other, and referral of the dispute to an emergency board, after the taking of a strike vote among the employees concerned. Until the wage movements of 1941, the recommendations of emergency boards were commonly accepted by both sides. After the experiences of that year, the pattern changed, and it has become customary to reject, rather than accept, the recommendations of emergency boards set up to handle national wage and rules movements. The outstanding exception was the acceptance of the recommendations of the board on the 40-hour week for nonoperating rail employees, made in 1948. In practically every other instance

²⁵ Seventeenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1951 (Washington: Government Printing Office, 1952), p. 33.

of this nature since 1941, emergency board recommendations have served as a base to be used for securing further wage and rule concessions in a final settlement, usually made under Executive auspices. This practice during recent years has resulted in the impasse confronting the rail carriers and the operating brotherhoods at the close of fiscal year 1951.

The present situation, if it continues, can result only in a complete breakdown of the machinery for the settlement of wage and rules disputes Already some quarters are urging compulsory arbitration through making the recommendations of the emergency boards a mandatory settlement. What is really needed is a renewal of faith on the part of both management and labor in the efficacy of direct negotiations and the mediatory process in bringing about the settlement of the so-called national disputes or concerted movements.

The situation which caused the National Mediation Board such grave concern during 1951 did not improve during 1952. During the year, six emergency boards were created by Executive order under the provisions of Section 10. Three of the six emergency boards established were created to consider disputes which were national in character. In only one of the six disputes were the issues settled on the basis of the emergency board recommendations. In the other five cases, the findings of the emergency boards were used merely as the basis for further negotiations or mediation efforts.²⁶

The Development of Concerted Movements

It seems clear that the settlement of labor-management controversies in the railroad industry has been greatly

²⁶ Eighteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1952 (Washington: Government Printing Office, 1953), p. 24.

complicated by the development of concerted movements in which several labor organizations will make demands on the carriers all over the country or in major regions of the country. The negotiation of disputes on a regional or nationwide basis may be traced back to 1902, though organizational efforts in the railroad industry date back some twenty or twenty-five years prior to that time. The four great "brotherhoods" (engineers, conductors, firemen, and trainmen) had achieved effective organization between 1880 and 1893. The Switchmen's Union of North America was organized in 1894.

Much of the early growth of railroad unions occurred in the West and Southwest, and it is not surprising that the first concerted movement developed in this area. In 1902 the conductors' organization in the West conceived the idea of presenting simultaneous demands to all of the railroads operating in western territory, and a western labor association was formed to press these demands. This was done because the labor organizations had found that the strongest argument which they had to overcome was the contention of the individual railroads that they could not afford to establish a more favorable wage scale or grant other benefits because of the competition of other railroads which were not subjected to the same demands. The conductors were joined in their demands by the railroad trainmen. After a period of negotiation with a committee representing the western

railroads, the labor organizations were able to obtain wage increases and other concessions. Thus, the labor organizations won the first concerted wage movement, and the pattern of negotiations established at that time has been generally adhered to since that time.

The success of the western conductors and trainmen in their concerted movement of 1902 led them to present new demands to the western carriers in 1907, which were followed by demands upon these carriers from the firemen and engineers in 1909. These disputes were settled by mediation and arbitration proceedings under the Erdman Act. It was not until 1910 that a concerted movement was attempted in the East, when the conductors and trainmen on the eastern railroads presented wage demands to the carriers, but the railroads refused to consider them in unison and eventually the dispute was settled by the individual carriers. In 1912, the engineers in the East submitted certain wage demands to the carriers which were followed by demands from the firemen during the later part of the year. These disputes were settled by arbitration and since the award given the firemen tended to upset the traditional wage pattern, the conductors and trainmen, in 1913, presented new requests for increases in pay. This dispute was resolved by use of the arbitration machinery created under the Newlands Act.

These early concerted movements demonstrated, at

least to the satisfaction of the railway labor organizations, the feasibility of regional or nation-wide negotiations regarding changes in wages and, more recently, rules and working conditions. Important concerted movements have occurred periodically since that time. Wage increases were obtained generally by railroad labor following the conclusion of government operation and control during World War I. In 1921, during a business recession, virtually all of the railroads in the country requested and obtained a wage reduction through the facilities of the Railroad Labor Board. This nation-wide wage reduction was followed by the concerted wage movements of 1924 through 1928 which resulted in the restoration of previous wage scales and additional increases in pay for rail employees throughout the country.

During 1931, the railroads opened negotiations with the labor organizations for a fifteen per cent reduction in basic rates of pay. As a result, a temporary emergency agreement was reached under which the employees accepted a ten per cent reduction in wages for a period of one year without disturbing the base rates. This agreement was later extended to June 30, 1934. Between this date and March 31, 1935, the wage deduction was gradually reduced until the original rates of pay in effect prior to the agreement were restored.

In the spring of 1937, the fourteen non-operating labor organizations demanded an increase in wages which was

followed by a similar demand from the five operating brotherhoods. These wage disputes were handled separately and following mediation by the National Mediation Board, the non-operating brotherhoods received an increase of five cents an hour, effective August 31, 1937. The dispute with the operating brotherhoods was settled on October 1, 1937, the agreement providing for an increase of 44 cents daily in the base pay rates of engine and train service employees and of \$13.20 in the monthly pay rates of dining car stewards and yardmasters.

These wage increases had just been placed in effect when the severe business recession during the fall and winter of 1937 began. The carriers, in April, 1938, decided to request their employees to accept a wage reduction of 15 per cent and formal notice of this intention was given the railway labor organizations on May 12, 1938.²⁷ This wage reduction controversy may be considered the forerunner of the disputes which have developed since that time.

The present wage and rule movements are characterized by simultaneous action on the part of either the non-operating brotherhoods or the operating organizations, and occasionally the two groups will join to present their demands to the

²⁷For a brief history of railway wage disputes, see Railroad Wages and Labor Relations, 1900-1946, The Executive Committee of the Bureau of Information of the Eastern Railways (New York: June, 1947), pp. 29-134.

carriers. The railroads have reacted to this situation by forming associations which present counter demands or request wage reductions and changes in the rules of the working agreement on behalf of all of the carriers. When negotiations are carried out on such a broad scale, the carriers are represented by regional committees known as "Conference Committees" authorized by the individual railroads through one of three regional organizations, the Association of Western Railways, the Bureau of Information of the Eastern Railways, and the Bureau of Information of the Southeastern Railways. These bureaus, in turn, are subject to the direction of the Western Association of Railway Executives, the Eastern Railroad Presidents' Conference, and the Southeastern Presidents' Conference respectively. The railroad labor organizations are represented in these negotiations by the chief executives of the brotherhoods which are participating in the specific movement and by the Railway Labor Executives Association. This method of handling concerted regional or nation-wide movements is a direct outgrowth of the techniques developed in the negotiations of 1902. Subsequent negotiations in disputes of this type have amplified and standardized the procedure sketched above.

Summary

Throughout its history, the National Mediation Board has been successful, generally speaking, in implementing the

provisions of the Railway Labor Act. The substantive rules which the Board has established to be followed by the parties in utilizing the provisions of the statute are fair and reasonable. Most of these rules have never been questioned, but in those few cases in which labor or management has felt them to be arbitrary, the Board has been upheld by the courts. The guiding policies developed by the Board in response to certain troublesome issues have received very little criticism.

In mediation cases, the Board must be sustained in its insistence that direct negotiations be exhausted before mediatory efforts are instituted. If the Board did not take this position, direct negotiations would tend to become a preparation for mediation and the possible eventual appointment of an emergency board. In addition, the Board has the responsibility under the statute of determining when its mediatory efforts have been exhausted. The labor organizations are to be criticized for those instances in which they have set strike dates or conducted work stoppages prior to the conclusion of mediation. It is possible that penalties should be established for such violations of the clear intent of the Act.

The position taken by the Board in reference to the determination of class or craft bargaining units must also be upheld. The designation of bargaining units on the basis of past bargaining practices and the insistence of the Board

that certification may not be made on the basis of race, color, or creed has been a stabilizing influence in the industry and undoubtedly has contributed to carrier efficiency.

The difficulties which have developed to trouble the National Mediation Board have been due largely to the failure of the parties to comply with the spirit and the intent of the Act. This is indicated by their failure to settle many grievance disputes through direct negotiations, by the infrequent use of the arbitration machinery created by the statute, and by the increasing tendency on the part of the labor organizations to refuse to submit or to withdraw cases from the Adjustment Board, thus provoking labor emergencies.

In addition, there has been a marked increase in the dependence placed upon the creation of emergency boards for the settlement of both mediation and grievance disputes, as illustrated by the extensive use of the services of the National Railway Labor Panel during the war years. For a time, both management and labor accepted the findings of these emergency boards, but gradually it became the custom of the parties to refuse to abide by the decisions of the emergency boards and to use them as a basis for further negotiations or for strike action. This has been especially true of the labor organizations. Thus, there have been a large number of disputes in recent years which have exhausted the provisions of the Act without a settlement being reached which was acceptable to both parties.

A detailed analysis of these disputes would be impractical, but in subsequent chapters certain major disputes which have not been settled under the provisions of the statute, and which, in some cases, have ultimately resulted in government seizure and operation of the railroads, will be considered. These disputes indicate the major difficulties that have been encountered and provide an additional basis for evaluating the Railway Labor Act.

CHAPTER V

LABOR-MANAGEMENT CONTROVERSIES, 1938-1942

The wage increases which the railroads granted to their employees in the fall of 1937 proved to be exceedingly ill-timed. Soon the carriers were caught in the depression of 1937-1938 and their financial situation became most embarrassing. The efforts of the railroads to obtain relief from their financial emergency resulted in a famous labor-management dispute--the wage reduction controversy of 1938.

The Wage Reduction Controversy of 1938

The railroads of the United States, including the Railway Express Agency, acting through the Carriers' Joint Conference Committee, formally notified their employee labor organizations on May 12, 1938, of their intention to reduce wages by fifteen per cent, effective July 1, 1938. This notice of intention was accompanied by a statement in which the railroads explained their position, maintaining that increased operating costs and decreased revenues were such that "the current level of railway wages cannot be maintained under existing circumstances. Obviously, the condition of the railroad industry . . . and, the factors which must determine rates of pay, make a reduction both necessary and justified."¹

¹Traffic World, Vol. LXI, May 14, 1938, p. 1124.

As a result, the representatives of 19 railroad labor organizations met with the Carriers' Joint Conference Committee in Chicago on June 28 to discuss the proposed wage reduction and to arrange additional conferences on the matter beginning July 20. Since the Brotherhood of Railroad Trainmen was not a member of the Railway Labor Executives Association, separate meetings were held with this organization. Negotiations were continued in Chicago during the latter part of July, but, since the railroad labor organizations continued to refuse to consider a wage reduction, the chairman of the Carriers' Joint Committee requested intervention by the National Mediation Board. Mediation under the auspices of the National Mediation Board began on August 11, with all three members of the Board participating. The Mediation Board continued its efforts to settle the dispute, but, on August 31, Dr. W. M. Leiserson, Chairman of the Board, announced that every possibility to mediate the dispute had been exhausted and that arbitration had been proposed. The carriers accepted the offer of arbitration but it was refused by the labor organizations.²

In the meantime, the labor executives representing the employees announced their intention of conducting a strike vote. This vote was completed by September 25, and a large majority of the employees voted to strike rather than accept

²Traffic World, Vol. LXII, Sept. 3, 1938, p. 439.

the wage reduction. When the result of the strike vote became definite, the National Mediation Board notified the President that a labor emergency existed and on September 27 an Emergency Board was created to investigate and report on the dispute.³ This Board was composed of Professor H. A. Millis of Chicago, James M. Landis of the Harvard School of Law, and Chief Justice Walter P. Stacy of the Supreme Court of North Carolina who acted as Chairman.

Extensive hearings began before the Board in Washington, D. C. on September 30, and continued through October 17 with both labor and management supporting their respective positions at length. On October 29, the Board submitted its findings to the President with the recommendation that "no horizontal reduction upon a national scale of the wages of railway labor should be pressed by the carriers at this time."

During the hearings before the Emergency Board, the carriers elected to emphasize the financial difficulties of the railroads and their belief that the one opportunity available to them, as a remedy for the emergency, was a reduction in labor costs. It was pointed out that the railroads were confronted by a diminishing volume of traffic accompanied by shrinking net income, and that the average return upon investment was so low that many railroads were in the hands of

³Ibid., p. 637.

receivers or trustees. In addition, it was contended by the carriers that the "real earnings" of railway employees had increased more than 25 per cent during the previous 9 years and that the wages of rail workers were substantially higher than the wages of workers in other industries. A wage reduction would serve to bring rail wages to a level comparable with those of workers in other industries and, at the same time, the estimated saving of \$250,000,000 annually would greatly help the "desperate financial condition" of the railroads.⁴

The railroad employee organizations did not disagree with the carriers as to the financial difficulties of the railroads, but there was a marked difference of opinion as to the reasons for the poor condition of the railroads and as to the proper solution of these difficulties. The employees presented four principal arguments in an effort to prove that the proposed wage reduction was unjustified. They maintained that the reduction of wages by 15 per cent or even a smaller percentage was unwise and that it failed to solve the real difficulties of the carriers. The difficulty in which the railroads found themselves was due to overcapitalization, a heavy burden of fixed charges, and unwise financial practices

⁴For statements concerning the positions of the parties, see Traffic World, Vol. LXII, Oct. 8, 1938, pp. 699-703; Oct. 15, 1938, pp. 755-759; and Oct. 22, 1938, pp. 813-818.

in the past and it was contended that the consequences of this situation should not be borne by the employees. The employees divided the railroads into three groups and distributed the estimated saving from a wage reduction of 15 per cent among them. The figures presented indicated that 24 per cent, or \$60,000,000, would go to railroads in receivership, that 19 per cent, or \$48,000,000, would go to "problem" railroads or railroads that were financially weak, while 56 per cent of \$140,000,000, would be saved by railroads which could not be considered financially weak. In fact, it was alleged that 36 per cent of the total savings which would result from a wage reduction would be retained by railroads with net income after fixed charges for every year from 1929 through 1937.

The employees also maintained that the increased productivity and responsibility which characterized railroad labor should be rewarded by increased wages rather than by decreased wages. Exhibits were submitted indicating that the ratio of employees per mile of track operated, the ratio of hours worked per mile of track operated, and the ratio of total compensation of employees per mile of track operated had all steadily decreased during the past years and that this decrease was evidence of increased productivity.

The third argument advanced by the employees was that the proposed wage reduction was hastily conceived and in direct contradiction to the recent action of the carriers in

raising wages. It was maintained that a wage reduction would stimulate wage decreases in other industries with harmful effects throughout the economy.

As a final argument, the employees sought to prove that the wage level and wage trends in the railroad industry were actually lower than in other industries. This assertion was based upon exhibits which divided total compensation by total hours worked to obtain average hourly earnings. These averages were compared with average earnings from other industries and indicated that rail wages were lower and did not fluctuate as much as wages in other industries.⁵

In submitting its report to the President, the Emergency Board emphasized two considerations. First, it was found that the proposed horizontal wage reduction to alleviate the financial distress of some of the railroads was "ill adapted to meet their needs." In this connection, the Board stated:⁶

Figures have been given before illustrating the distributable shares of groups of carriers in the estimated \$250,000,000 savings that the proposed wage reduction would bring about. Eight roads, it will be remembered, which can fairly be regarded as roads hardly entitled to consider themselves in acute

⁵For an excellent summary of the position of the parties in this dispute, see Report of the Emergency Board to the President Appointed September 27, 1938 Under Section 10 of the Railway Labor Act (Washington: Government Printing Office, 1938), pp. 19-37.

⁶Ibid., p. 49.

distress, would take some 36.9 per cent of these savings, while more than half of the \$250,000,000 would go to roads whose claim to present acute distress is not too easy to sustain. Weight might attend the claim of the carriers that railway labor make some sacrifice for the benefit of the industry as a whole, but little logic attends their insistence that because road A is in distress, labor employed by road B, which can make no such claim, should give up a portion of its wages, not to help road A, but to help road B. The inequity of reducing wages on a national scale, when the railroads are operated on a number of lesser scales, is obvious. That inequity persists whether a proposal for wage reduction on a horizontal scale be upon the basis of 15 per cent or on a greater or lesser percentage.

The second major finding of the Board was based upon a consideration of three factors--the general trend of wages in the railroad industry as compared to wage patterns in other industries, the current rates of pay of railway employees as compared to the wages of other workers, and the current level of wages throughout the economy. The Board found that no evidence was submitted which would indicate that railway workers were in a more favorable position than other employees.⁷ The Board concluded from these findings that the carriers should not carry out a horizontal reduction of wages upon a national scale.

The decision of the Emergency Board and its recommendations to the President were accepted with good grace by the carriers. On November 4, 1938, just five days after the Board

⁷Ibid., pp. 51-55.

submitted its report, Mr. J. J. Pelley, President of the Association of American Railroads, wired the President that the carriers had accepted and would abide by the findings of the Emergency Board.⁸

Minor Controversies During 1940 and 1941

There were no disputes of great consequence during the remainder of 1938 and 1939, but there were several minor disputes which resulted in short strikes during 1940 and 1941. In 1940, the engine service employees of the Monongahela Connecting Railroad went on strike when the carrier declined to agree to an operating rule which would require an additional man in the operation of diesel-electric switching locomotives. The National Mediation Board was unsuccessful in mediating the dispute and the carrier refused to submit the question to arbitration. The employees then set a strike date, following which the Mediation Board requested the resumption of negotiations. However, as the carrier refused, the threatened strike became effective April 30, 1940, and terminated May 8, 1940, after an agreement was reached by the parties following direct negotiations. In several other instances, disputes resulted in the circulation of strike ballots by the employees, but in each case the Board was able to

⁸For the text of the telegram, see Traffic World, Vol. LXII, Nov. 12, 1938, p. 993.

resolve the dispute through mediation.⁹

During 1941, one minor strike developed from a wage dispute involving the train and engine service employees of the Macon, Dublin and Savannah Railway. The National Mediation Board unsuccessfully attempted mediation and suggested arbitration. The carrier refused arbitration and, following additional mediation efforts, the employees went on strike February 27, 1941. The strike was settled on March 3, as a result of an agreement reached by direct negotiations. There were other disputes in which strike ballots were distributed to the employees but the Mediation Board was able to settle these controversies, either through mediation or by persuading the parties to submit the dispute to arbitration. In four cases, the Board found it necessary to recommend to the President that Emergency Boards be created. In one of these cases, the parties accepted the findings of the Emergency Board. In the other three disputes, the Emergency Boards were able to persuade the parties to reach an agreement through mediation.¹⁰ In the meantime, a dispute had developed

⁹Sixth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1940 (Washington: Government Printing Office, 1940), pp. 5-6.

¹⁰Seventh Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1941 (Washington: Government Printing Office, 1941), pp. 9-10.

which involved virtually all of the carriers and their employees throughout the nation. This dispute had its origin in May, 1940, and was not finally settled until December, 1941.

The Wage, Rules, and Vacation Dispute
of 1940 - 1941

On May 21, 1940, the non-operating organizations consisting of fourteen individual labor unions presented a demand for vacations with pay simultaneously to all of the carriers in the eastern, southeastern, and western territories.¹¹ Five days after this proposal was made, the western carriers presented a counter demand to the organizations for a reduction in pay to offset any cost increases incurred in the event vacations with pay should be granted. The eastern and southeastern carriers did not join in this counter proposal.

The vacation with pay issue was discussed in conferences between the parties on the individual properties and, since no agreements were reached, the non-operating brotherhoods spread

¹¹The so-called non-operating organizations are: International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; The Order of Railroad Telegraphers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen of America; National Organization Masters, Mates and Pilots of America; National Marine Engineers' Beneficial Association; and the International Longshoremen's Association.

a strike ballot among their members on February 15, 1941. The National Mediation Board instituted mediation proceedings on March 14, 1941, and negotiations were continued until May 31, at which time the Board advised the parties that efforts at mediation had been exhausted and arbitration was proposed. The arbitration proposal was rejected by the employee organizations on June 16, 1941.

During this time, all of the major trunk line carriers in eastern and western territory had notified the five operating brotherhoods of proposed changes in the rules of service. This proposal was initiated on May 26, 1941, and on June 2, the southeastern carriers joined the eastern and western carriers in this demand on the operating brotherhoods.¹² One week later, the western and southeastern carriers proposed certain changes in the non-operating rules to the fourteen non-operating organizations. The eastern carriers did not join in these demands.

The rules issue was discussed in conferences between the employees and the carriers from July 24, to July 31, 1941. However, since the proposed changes were rejected by the operating brotherhoods on July 30, and by the non-operating

¹²The so-called operating organizations are: Brotherhood of Locomotive Firemen and Enginemen; Order of Railway Conductors of America; Brotherhood of Railroad Trainmen; Switchmen's Union of North America; and the Brotherhood of Locomotive Engineers.

organizations on July 31, the National Mediation Board instituted mediation proceedings on the request of the carriers at that time.

In the meantime, on June 10, 1941, the five operating brotherhoods submitted a demand to the carriers that existing basic daily wage rates be increased 30 per cent with a minimum increase of \$1.30 per day, to become effective on July 10, 1941. Simultaneously, the non-operating brotherhoods submitted a request to the carriers for an increase in wages of 30 cents an hour, with a minimum hourly wage of 70 cents, also to become effective on July 10. These wage proposals were considered in conferences between the parties from July 30, to August 5, 1941. The carriers rejected the proposed wage increases, but mediation was not immediately instituted by the National Mediation Board.

Following this breakdown of negotiations, each of the employee organizations circulated a strike ballot to be completed by September 5, 1941. The ballot for the operating organizations listed the rules dispute and the proposed increase in wages while the ballot for the non-operating employees listed four issues; vacations with pay, the counter proposal of the western carriers for a reduction in pay, the proposed wage increases requested by the labor organizations, and the rule changes proposed by the western and southeastern carriers.

Early returns from the strike ballot indicated that the employees were voting almost unanimously to strike. On August 11, 1941, the National Mediation Board, upon the request of the carriers, began mediation proceedings, including all of the issues and all of the parties to the various disputes in a single proceeding. Efforts at mediation continued until September 4, at which time the Board proposed that the parties submit the issues to arbitration. Arbitration was accepted by the carriers, but declined by each of the employee groups. Five days later, the operating brotherhoods announced a strike to become effective September 15, 16, and 17, while the non-operating brotherhoods set a strike date for September 11. The National Mediation Board then recommended to the President that an Emergency Board be established to consider the controversy, and the President created the Board on September 10, 1941.¹³

In addition to the disputes between the carriers and the operating and non-operating brotherhoods, a dispute had developed between the Railway Express Agency and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; the International Association of Machinists; and the International

¹³The development of this controversy may be traced in *Traffic World*, Vol. LXV, January-June, 1940; Vol. LXVI, July-December, 1940; Vol. LXVII, January-June, 1941; and Vol. LXVIII, July-December, 1941.

Brotherhood of Blacksmiths, Drop Forgers and Helpers. These organizations, on June 10, submitted a demand to the Railway Express Agency for an increase in wages. On the same day, the Railway Express Agency served notice on the three employee organizations demanding certain changes in the existing working rules and a limitation upon the existing vacation rule. The National Mediation Board entered this dispute on July 18, and mediation proceedings were instituted. Since this dispute was included in the general strike order of the non-operating employees, the President, in his proclamation creating the Emergency Board, gave it jurisdiction over this dispute even though it was separately classified and was not directly connected with the other major movements.

The Emergency Board created by the President was composed of five members; Chairman Wayne L. Morse of Oregon, Thomas R. Powell of Massachusetts, James C. Bonbright of New York, Joseph H. Willits of New York, and Huston Thompson of the District of Columbia. The Board met in Chicago, on September 15, and formal hearings began the following day. Hearings were continued through October 22, and the final report of the Board was submitted November 5, after the submission date of the report was extended twice with the President's approval.

During the hearings, a massive record was accumulated totaling 7,130 pages in addition to 436 exhibits. Witnesses

were heard and arguments were submitted by all of the parties to the dispute. A detailed consideration of all of the demands, facts, and arguments which were submitted to the Board would be impractical, but the position of the parties may be summarized.

As stated previously, the three principal issues in this national controversy were wages, certain changes in the working rules of both the operating and non-operating organizations, and vacations with pay for the non-operating employees. In relation to wages, the operating employees demanded that existing basic daily wage rates be increased 30 per cent with a minimum daily increase of \$1.80. The same percentage increase was also to be applied to all arbitraries, miscellaneous rates, or special allowances, as well as to daily and monthly guarantees. The non-operating employees demanded an increase in wages of thirty cents per hour with a minimum hourly wage of seventy cents.

During the hearings before the Emergency Board, the carriers presented a counter proposal to these wage demands. A sliding-scale "emergency compensation payment" was proposed and was to apply between November 1, 1941, and December 31, 1942. This payment was to be based on a percentage factor, derived from a composite index based on the gross revenue of the carriers and the cost of living. The factor was to be applied to the basic wage rate with a maximum increase of 15

per cent on weekly wages up to \$30.00. That is, a maximum increase of \$4.50 would be paid to workers whose wages were \$30.00 or more per week. The composite index was to be based on a three-month period beginning November 1, 1941, and was to be adjusted quarterly if the index moved five points or more from the date of the previous adjustment.¹⁴

The vacation with pay issue was confined to the non-operating organizations. These employees demanded that all carriers, with the exception of the Railway Express Agency, grant to all employees, upon the completion of one year's service, two consecutive calendar weeks vacation with pay. The rate of pay was to be based on eight times the employees hourly rate for hourly employees, and if the employee worked on piece work or on a mileage, daily, or monthly basis, pay was to be at the regular daily rate for the last services performed. The carriers in western territory submitted a counter proposal to this demand. These carriers proposed that when the cost of providing vacations with pay could be ascertained, a deduction be made from the wages of the employees which would be sufficient to offset the additional cost incurred by the carriers.¹⁵

¹⁴Report to the President by the Emergency Board Appointed September 10, 1941 Under Section 10 of the Railway Labor Act (Washington: Government Printing Office, 1941), p. 8.

¹⁵Ibid., p. 9.

The rules issue did not come before the Emergency Board, since the operating brotherhoods and the carriers had agreed that their rules dispute would be held in mediation until the wage dispute could be settled. However, the non-operating brotherhoods and the carriers did not reach such an agreement. The western and southeastern carriers proposed, briefly, that certain rules be revised so that while craft and class lines would be retained and recognized, essential work could be performed by the employees without sacrificing efficiency or economy. It was also proposed that certain rules be clarified to provide more flexibility in working hours, the assignment of work, and starting times, and that the rules placing limitations upon the presentation and handling of claims and grievances be made uniform.¹⁶ In submitting this proposal, the carriers stated that they were not requesting the Emergency Board to recommend the adoption of the proposed rule changes, but rather were asking for a condemnation of the existing rules with a recommendation that the rules issue be submitted to arbitration or mediation if the issue could not be adjusted by the parties.

The employee organizations, in presenting their position to the Emergency Board, submitted a consolidated record. The non-operating organizations presented their case first,

¹⁶Ibid., p. 10. The complete text of the proposed rules are found in Appendix C-4, pp. 102-109, of this document.

followed by the operating organizations, which adopted most of the testimony and many of the exhibits submitted by the non-operating organizations. The carriers, in turn, made their presentation, but a separate record of defense was introduced by the Railway Express Agency and by the so-called Short Lines. All of the carriers were united in their opposition to the wage proposals of the two groups of employees and to the vacation proposal of the non-operating unions. However, an independent record was introduced by the carriers in western and southeastern territory in support of their proposed rule changes.

In supporting their demand for wage increases, the non-operating organizations contended that the railroad industry was "enjoying a high level of prosperity" and could afford to raise wages. It was also argued that railroad employees were entitled to an increase, since wages had not improved in the railroad industry for many years; railroad employees were highly skilled in comparison with other workers; railroad wages were lower than in corresponding employment; railroad employment was irregular; and finally, the cost of living was increasing rapidly.

To a large extent, the position of the operating organizations concerning the wage issue coincided with that of the non-operating unions. In their introductory brief, the operating organizations presented the following viewpoint:¹⁷

¹⁷Ibid., p. 16.

The contention of the operating employees that their wages do not fairly and adequately compensate them for the services they render and their consequent proposal for a wage increase rest upon the following considerations:

1. The kind and character and characteristics of the work;
2. The increase in the service performance and responsibility of the men since the fixation of wages at substantially the present level;
3. The increased service performance which is being demanded, and will be demanded of them in the emergency period, upon which we have entered, and which will undoubtedly continue for many months and probably for many years;
4. The wages paid and wage trends in other industries;
5. The rise in the cost of living which has already ensued and the certainty of further marked rises.

The non-operating employees, in support of their demand for two weeks vacation with pay, presented four principal arguments. It was maintained that vacations are almost universally recognized as desirable since they provide relief from the strain of work and afford an opportunity for leisure; that there was a marked trend toward the granting of vacations to industrial workers; that this trend might be extended to the railroad industry without any great difficulty; and finally, that the cost of providing vacations to railroad employees would be insignificant in view of the prosperity of the railroad industry.¹⁸

The arguments of the carriers are more difficult to summarize as they consisted largely of denials or rebuttals to

¹⁸Ibid., p. 15.

the presentations of the employee groups. The carriers, in general, maintained that the proposals of the organizations were excessive, especially in view of previous and prospective railroad earnings. The very poor earnings of the railroads during the 1930's were emphasized, and it was maintained that present earnings were necessary to offset past deficits. The contention of the employees that railroad wages were poor when compared to wages in other industries was attacked, and alleged increased worker productivity was explained by the carriers as being due to large investments in railroad plant and increased managerial efficiency.

With respect to the request for vacations with pay, the carriers conceded that vacations were desirable, but it was contended that vacations should be restricted to regular employees who worked throughout the year. However, the carriers urged that the institution of vacation plans during the national emergency would decrease railroad efficiency and hamper the defense effort. Therefore, it was proposed that the vacation proposal be postponed for the duration of the emergency after which a "reasonable and workable" plan could be devised.¹⁹

The Emergency Board, in rendering its decision, was well aware of the enormous problems with which it had been

¹⁹Ibid., pp. 17-21.

presented and the far-reaching effects of any recommendations that it might make, as is illustrated by the following statement:²⁰

It is impossible to make a satisfactory decision on wage policy in a single industry under the circumstances which confronted this Board However, we have given our most careful attention and our best effort to an evaluation of all the varying considerations inherent in the task of deciding the issues of this case.

Although, as individuals, we are not in full agreement with everything said in our joint report, nevertheless we believe that such differences of emphasis have been given appropriate offsetting evaluations so that in presenting the conclusions and recommendations here made we are, as a Board, in unanimous and unqualified agreement. The unanimity of the Board is all the more remarkable when one considers the fact that the mass of record in this case contains ample statistical data and evidence which would support a variety of decisions on the varying issues.

The task of the Board became one of rendering value judgements which discarded the extreme positions taken by the parties on both sides of the dispute. We endeavored to use the standards of common sense judgement in evaluating the evidence and contentions submitted by the parties.

The Emergency Board, in submitting its findings, made five separate recommendations.²¹ On the wage issue, the Board held that the five operating brotherhoods should be granted an increase of 7-1/2 per cent over the existing basic wage rate and that the fourteen non-operating brotherhoods should receive an increase of nine cents an hour.²² These increases,

²⁰Ibid., pp. 74-75.

²¹Ibid., pp. 77-81.

²²This addition represented an average increase of approximately 13-1/2 per cent.

recommended as temporary additions to the wage scale and not as changes in the basic rates, were to be effective from September 1, 1941, through December 31, 1942, unless extended by mutual agreement of the parties.

As to the vacation issue, the Board recommended that the non-operating employees be granted a vacation of six consecutive work days with pay for all who worked not less than sixty per cent of the total work hours in a given year. The Board also recommended that the existing working rules be revised by direct negotiations between the parties so that there would be no conflict between the working rules and the vacation plan to be instituted.

In relation to the rules dispute between the carriers and the non-operating brotherhoods, the Board held that the controversy should be resubmitted for determination under the machinery of the Railway Labor Act. In this connection, the Board stated:²³

It is the Board's opinion that the rules dispute is one which lends itself to settlement by negotiation, mediation, arbitration, or hearings before a Special Emergency Board. It is not one which should be settled by a test of economic force. If a Special Emergency Board is appointed to hear the dispute, it should have among its members persons thoroughly versed in the practical problems of railroad labor and of railroad operations.

The Board submitted separate findings with respect to

²³Ibid., p. 79.

the so-called Short Line railroads and the Railway Express Agency. The Board recommended that for non-operating employees of the Short Line railroads, a basic minimum hourly wage of 40 cents be established. It also recommended continued negotiations between the parties in order to effect other wage increases for the employees and the appointment of another Emergency Board if direct negotiations, mediation, and arbitration failed. In relation to the Railway Express Agency, it was found that a basic minimum wage of 45 cents an hour should be established for all employees, and that other base wage rates should remain unchanged. In addition, an increase of 7-1/2 cents per hour was awarded to all employees, the increase to be a temporary addition to the base wage and to apply from September 1, 1941, through December 31, 1942.

Following the presentation of its report and recommendations to the President on November 5, 1941, the Emergency Board adjourned subject to recall by the President. When the findings of the Board were made public by the President, they were accepted by the carriers, but the employee organizations objected strenuously to the Board's recommendations. The operating brotherhoods rejected the report on the ground that the wage increases suggested were temporary and did not constitute increases in the basic wage rate. It was also felt that the recommended 7-1/2 per cent increase in wages was entirely too low. Other objections were raised, but these two

recommendations were probably the major reasons which caused the operating brotherhoods to announce a strike date effective December 7, 1941. The non-operating brotherhoods held a meeting shortly after the Board's report was released, and the report was rejected by formal action. They objected to the report on the ground that the wage increases recommended were temporary and did not affect the basic wage, and it was felt that the nine cent an hour increase was entirely insufficient. Other objections were made to the Board's recommendations concerning vacations with pay, the wages of Short Line railway employees, and those of employees of the Railway Express Agency. However, the non-operating brotherhoods did not immediately establish a strike date.²⁴

Following the rejection of the Emergency Board's report by both groups of employees, a series of conferences were held in Washington by the President which were attended by representatives of the carriers and of the employees. As a result of these conferences, the President decided to give the parties to the dispute an opportunity to reargue the case before the Emergency Board, and to state their exceptions and objections to the Board's findings. Accordingly, the Board was recalled and convened in Washington on November 27, 1941.

²⁴Eighth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1942 (Washington: Government Printing Office, 1942), p. 38.

The Emergency Board then conferred with the President, and at the suggestion of the Board, the President decided that there were two different methods by which the dispute might be resolved. The Board was authorized to hear a reargument of the case and submit a supplementary report based upon the complete record of the dispute as submitted by the parties. In addition, the Board was given authority to offer its services as a mediating body and attempt to settle the dispute by mediation following reargument.²⁵

The Board began a rehearing of the case on November 28, and on November 29, at the close of the hearings, the Chairman of the Emergency Board offered the services of the Board as a mediating body by the following statement:²⁶

Under instructions from the President, this Board is duty-bound to make a supplementary report to the President on Monday, December 1. That report may be on the arguments or rearguments which the parties have presented to the Board yesterday and today. That report may, however, under instructions from the President and with his authorization be a report made upon mediation.

Therefore, this Board here and now offers its mediation services to these parties and notifies them that it will be available between now and Monday, when it makes its report to the President, to serve the parties in any way it can in mediation, to the end of attempting to reach a settlement of this dispute.

²⁵ Supplementary Report to the President by the Emergency Board Appointed September 10, 1941, under Section 10 of the Railway Labor Act (Washington: Government Printing Office, 1941), pp. 5-6.

²⁶ Ibid., p. 7.

In executive session following the close of the re-argument hearings, the parties to the dispute accepted the Board's offer of mediation, and mediation conferences were held from Saturday, November 29, through Monday, December 1. On Monday night, the Board called the President and informed him that the parties had settled their differences through mediation, and that a national railway strike had been averted.

In its supplementary report, the Emergency Board pointed out that it had not been "moved by anything which was said during reargument hearing to modify in any material way the major recommendations" which had been submitted in its previous report. Accordingly, at the end of the second day of hearings, the Board offered its services as a board of mediation.²⁷ Thus, the final agreement reached by the parties was a result of mediation even though negotiations began upon the foundation set forth in the first report of the Board.

In the final settlement, it was agreed by the parties that all wage increases granted were increases in basic rates of pay and were not temporary. This agreement was reached on the condition that the railway labor organizations would not present demands for rule changes during the duration of the national emergency, and in return, management agreed not to

²⁷Ibid., p. 1.

press for any changes. The mediation agreement provided for the wages of the operating brotherhoods to be increased 9-1/2 cents per hour, while the non-operating brotherhoods received an increase in wages of 10 cents per hour. Vacations were granted to the non-operating organizations on virtually the terms recommended by the Board in its original report. Vacations with pay were authorized for 6 consecutive work days for those employees who worked "substantially" throughout the year, and it was also agreed that the parties would work out by negotiation the details of the rules, conditions, and arrangements covering the vacation period. The employees of the Short Line railroads, under the mediation agreement, received a basic minimum wage of 40 cents per hour, with the condition that other wage increases should be worked out on the individual properties through direct negotiations.²⁸

The Railway Express Agency protested the terms of the mediation settlement which granted to its employees a wage increase of 10 cents an hour, and refused to accept the agreement. The Emergency Board recommended that the President request the Railway Express Agency to join in the settlement in view of the fact that all of the other carriers as well as the employee organizations were willing to accept the agreement, and that the Railway Express Agency was "a financial

²⁸Ibid., pp. 18-20.

subsidiary in all practical effects of the carrier organizations."

In concluding its supplementary report, the Board complimented the parties to the dispute by the following statement:²⁹

It should be said that neither side obtained all that it wanted out of the mediation proceedings, but it was gratifying to see that all of them recognized that when they went into mediation it was essential that they demonstrate a willingness to compromise their differences and adopt a give-and-take policy.

Their attitudes and sincere efforts to reach a settlement which characterized all of their relations with the Board during mediation are a credit to themselves and their principals, and their final willingness to join in the settlement represents a distinct service to their country in this time of great emergency.

In this manner, what was perhaps the most important dispute to ever develop under the Railway Labor Act up to that time, was settled by mediation after the processes of the Act had apparently been exhausted.

The Creation of the National Railway Labor Panel

A final noteworthy development which began in December, 1941, should be mentioned. Partly as a result of the final developments in the dispute which has just been discussed, the railway labor organizations agreed after a series of conferences between labor and management that for the

²⁹Ibid., p. 21.

duration of the war there should be no strikes or lockouts, and that all disputes should be settled peacefully. The Railway Labor Executives Association, as the representative of the employees, announced that there should be no interruptions or threatened interruptions to the national transportation system, and the Association pledged itself and the employees to this objective. In return, the Association suggested that the procedures of the Railway Labor Act be supplemented in order to facilitate the establishment of Emergency Boards.

On May 22, 1942, the President, as a result of these commitments and suggestions, by Executive Order 9172, created the National Railway Labor Panel and modified the procedures of the Railway Labor Act. As previously pointed out, Section 10 of the Railway Labor Act, gives the National Mediation Board the authority to recommend the appointment of "emergency boards" in the event of a threatened interruption to interstate commerce. The National Mediation Board had adopted the policy of waiting until strike ballots had been circulated, and a strike date fixed, before recommending the appointment of such a board. Under the President's Executive Order, this procedure was changed, and the representatives of the employees were authorized to notify the chairman of the National Railway Labor Panel of the failure of the parties to adjust a dispute, and of their desire to avoid taking a strike vote. If,

in the judgement of the chairman of the Panel, a dispute threatened to interfere with the prosecution of the war, an emergency board of three members might be appointed to investigate and report to the President. The National Railway Labor Panel also served as a pool from which all emergency board members were selected.³⁰

This procedure was relied upon exclusively for the creation and appointment of emergency boards until 1945, at which time the railway labor organizations resumed the practice of taking strike votes and establishing strike dates. From 1945 until the National Railway Labor Panel and the provisions creating it were abolished in 1947, emergency boards were appointed under the provisions of Section 10 of the Act as well as under Executive Order 9172.

Summary

The period from 1938 through 1942 is an important part of railway labor relations history because of the three major events which have been discussed: the wage reduction controversy of 1938; the wage, rule, and vacation dispute of 1940-1941; and the creation of the National Railway Labor Panel in 1942. These developments are important because the processes of the Railway Labor Act for the orderly settlement of

³⁰For a discussion of this development, see the Eighth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1942 (Washington: Government Printing Office, 1942), pp. 2-4.

such disputes were taxed to their utmost, the decisions reached in these controversies provide a partial basis for an evaluation of the Railway Labor Act, and the creation of the National Railway Labor Panel established a new method for the final settlement of major railway labor controversies.

As in all labor disputes which are national in character, the issues in the wage reduction controversy of 1938 were complex. The rail carriers had granted a wage increase to the employees during the fall of 1937, and in the early spring of 1938, the employees were asked to accept a wage reduction of 15 per cent. The railroads supported their position by contending that a substantial wage reduction was necessary to alleviate the financial emergency in which they found themselves. It was also maintained that the real income of railway workers had increased 25 per cent in recent years and that rail wages were higher than wages in comparable industries. In turn, the employees maintained that a wage cut did not constitute an adequate remedy to rail financial problems, that a majority of the savings achieved would not go to railroads that could be considered to be in financial difficulty, and that rail average hourly earnings were below the level of wages existing in other industries.

In its decision, the Emergency Board found that a horizontal wage reduction was "ill adapted" to alleviate the financial distress of some of the nation's railroads, and it

also found that no evidence was submitted which indicated that rail workers were in a more favorable position than workers in other industries. It is believed that the Board must be supported in its findings. The railroads were guilty of short-sightedness in granting substantial wage increases in the fall of 1937 to be followed by a wage reduction proposal announced informally during April, 1938. However, the recommendation of the Board is most strongly supported by the fact that more than half of the estimated \$250,000,000 saving would have been retained by railroads that could not be considered to be in financial difficulty. The failure of the carriers to submit evidence supporting their contention that rail workers were substantially better paid than workers in other industries made their position weak indeed.

In the national controversy of 1940-1941, between the operating and non-operating labor organizations and the carriers, the dispute involved wages, working rules, and vacations for the non-operating employees. Demands and counter demands were made by both groups, but when the issues were submitted to the Emergency Board, the operating brotherhoods sought only a wage increase as both parties had agreed to negotiate the rules issue. The non-operating employees demanded vacations with pay and a wage increase, while the carriers sought changes in certain working rules applicable to this employee group.

In supporting their demands before the Emergency Board,

the employees presented a consolidated argument in which they urged that a substantial wage increase was justified because of increased living costs, rising rail earnings, and the high degree of skill required of railway workers. The non-operating employees did not press the rules issue initiated by the carriers, but they strongly supported their vacation demands. It was argued that most industries granted vacations with pay, that vacations were both desirable and feasible, and that the cost of the proposed plan would be negligible.

The carriers, in opposing these demands, contended that the wage proposals were excessive when past and anticipated rail earnings were considered or when rail wages were compared with wages in other industries. They did not argue that a wage increase was not justified. Regarding the vacation issue, the carriers felt that vacations were desirable, but it was maintained that the question should be deferred for the duration of the national emergency.

The recommendations of the Emergency Board appear to be entirely reasonable. The Board suggested a 7-1/2 per cent wage increase for the operating groups and a .9 cent increase for the non-operating employees. As there appeared to be no major obstacles to the institution of a vacation plan, the Board found that the non-operating employees should be granted six days vacation with pay. The Board also must be supported in its findings on the rules issue. It held that this issue

was properly the subject of negotiations between the parties or that it might be settled by mediation or by a Special Emergency Board composed of persons experienced in railroad practices and procedures. This finding was made because the recommendations of an inexperienced group might have produced inequities or hardships for one or both parties.

The Emergency Board's recommendations were immediately accepted by the carriers, but they were rejected by the employees. This action cannot be condoned when it is remembered that the Railway Labor Act constitutes legislation proposed and supported by both labor and management, the appointment and investigation of a dispute by an Emergency Board being the final and conclusive step in its procedures. Unfortunately too, this rejection established a precedent which has been followed frequently in subsequent disputes. In many cases, the recommendations of an Emergency Board have merely served to establish a fresh basis upon which negotiations have been renewed.

The third significant development of this period was the creation of the National Railway Labor Panel. This Panel was created by President Roosevelt at the suggestion of the Railway Labor Executives Association in return for a "no-strike" pledge from the Association and the employees that it represented. Previously, the National Mediation Board, as a matter of policy, had required a strike vote and the establishment of

a strike date before it would certify to the President that an emergency existed. Following the establishment of the Panel, it became possible for a union leader to request the creation of an Emergency Board by appealing to the Chairman of the Panel and a strike vote from the employees was no longer necessary. This procedure simplified the establishment of Emergency Boards and their use became more and more frequent.

The creation of the National Railway Labor Panel appears to have been primarily a political measure and its use seriously weakened the Railway Labor Act. Under the Act, the appointment of an Emergency Board is the final step in the settlement of major controversies and the findings of such a Board are supposed to place an obligation of acceptance upon the parties. The ease with which Emergency Boards drawn from the Panel could be created and, consequently, their extensive use, accounts in no small measure for the tendency of the labor organizations to refuse to accept the recommendations of such Boards. There is little logic in permitting the final step under legislation of this kind to become easy to take.

The cases considered in the present chapter brought to an end the period in which the Railway Labor Act and the agencies which functioned under it were relatively successful in settling controversies between the employees and the carriers. During this period, direct negotiations between workers and employers were taken seriously and many disputes were

settled through such negotiations. Mediation was often successful and even arbitration was sometimes used effectively. When emergency boards had to be set up, their decisions were usually accepted by the workers and carriers, though sometimes with ill grace.

We may question, however, the extent to which the results obtained depended upon the excellence of the Railway Labor Act and its agencies and procedures. Considerable attention should be paid to the economic background of the period. In many of the years business was depressed, railroad earnings were very low, and the carriers could hardly be called upon for increases in wages. There was no national emergency which made the day-to-day operation of the railroads completely indispensable. Some at least of the labor organizations in the railroad industry had not yet acquired the full power which they were able to bring to bear later. Competition between individual unions for power and influence was still largely a matter for the future.

Under these conditions the Railway Labor Act had every chance to operate successfully. There was no incentive for the labor organizations to bargain perfunctorily, refuse mediation, and fail to accept the decisions of emergency boards in the hope of getting better terms directly from the carriers. There was almost no chance that the President of the United States would intervene in the interests of the employees.

Under the circumstances it seemed best for the workers (and for the carriers) to accept the settlements which could be obtained under the procedures of the Railway Labor Act. In short, it may be argued that the Railway Labor Act worked because the parties to controversy were willing to let it work.

CHAPTER VI

THE NATIONAL WAGE AND RULE MOVEMENTS OF 1942 AND 1943

It will be recalled that, in the vacation and wage increase movements of the non-operating employees during 1940 and 1941, the Emergency Board that was appointed to hear the dispute was able to mediate a settlement between the parties after its recommendations proved unacceptable to the labor organizations. This mediation agreement was divided into two parts; a wage agreement which provided for an increase of 10 cents per hour in the basic wages of non-operating employees, beginning December 1, 1941, and a vacation plan which granted an annual vacation of six consecutive work days with pay for all employees who had served 160 days or more during the preceding year.

However, at the time the mediation agreement was executed, the parties had not agreed that the settlement was to apply to 18 railroads which were designated as "class II and class III short line carriers." In the Emergency Board's original report of November 5, 1941, special recommendations were made in reference to these carriers. The Board had held that basic minimum wage rates of 40 cents per hour should be established for the non-operating employees of these carriers, and that additional wage increases should be agreed upon by

the parties through "the processes of negotiation, mediation, arbitration, and, if necessary, the findings of another Emergency Board." Accordingly, the terms of the mediation agreement were not applied to these carriers, and as a result of the inability of the parties to compromise their differences, a new controversy developed in 1942.

The Dispute Between Certain Short-Line Railroads
and the Committee of Fourteen Cooperating
Railway Labor Organizations

On June 18, 1942, the Committee of Fourteen Cooperating Railway Labor Organizations, which represented the national unions of the non-operating employees, presented a request to the Chairman of the National Railway Labor Panel for the appointment of an Emergency Board to consider a dispute between these organizations and a specified group of carriers.¹ Twelve of the railroads involved in this dispute were among the 18 carriers which had been given special consideration by the Emergency Board of 1941, but the remaining 27 were not included in these separate recommendations and 8 were class I railroads.

The Chairman of the National Railway Labor Panel, Dr. William M. Leiserson, concluded that this controversy "if unadjusted might interfere with the prosecution of the war,"

¹For a list of the carriers and labor organizations concerned, see Report to the President by the Emergency Board Appointed July 21, 1942 From National Railway Labor Panel (Washington: Government Printing Office, 1942), pp. 2-4.

and on July 21, 1942, he appointed an Emergency Board consisting of Walter P. Stacy, who acted as chairman, William H. Spencer, and Edwin E. Witte. The Emergency Board convened in Chicago, on August 10, and formal hearings were continued through August 27, 1942. Prior to the institution of formal hearings, eight of the railroads involved in this dispute achieved a settlement of their differences with the labor organizations concerned by direct negotiations, and during the course of the hearings, the Louisiana and Arkansas Railway Company, with the assistance of a mediator from the National Mediation Board, resolved its dispute with the International Brotherhood of Firemen and Oilers. It appeared that additional mediation efforts might be successful, and the Emergency Board held repeated conferences with representatives of both labor and management between August 31, and September 2, in the hope of achieving a settlement of all disputes through mediation. These conferences were partially successful, for an agreement was reached by the Huntingdon & Broad Top Mountain Railroad & Coal Company with the Brotherhood of Maintenance of Way Employees, and a partial settlement was achieved between the Atlanta, Birmingham & Coast Railroad and the same labor organization. These efforts, however, proved unsuccessful in the remaining cases, and the Emergency Board submitted its recommendations to the President

for the settlement of this controversy on September 14, 1942.²

During the hearings before this Emergency Board, the non-operating organizations requested an adjustment in the basic wage rate for the employees of the carriers involved, equal to the wage rate established by the mediation agreement executed in Chicago, on December 15, 1941, between the non-operating organizations and most of the nation's railroads. This was equivalent to requesting an additional 9 cents per hour from September 1, 1941, through November 30, 1941, with an increase of 10 cents per hour after December 1, 1941. The wage increase was sought to restore the wage differentials and the basic wage structure which existed prior to June 10, 1941, when the national wage movement of that year began. The carriers, in turn, contended that they were already under a "serious competitive handicap," that their revenue per mile was lower than that of other railroads, and that the wages of their employees compared favorably with the wages of industrial workers in their respective territories. In this connection, the Board found that the evidence submitted for the record by the carriers indicated their serious financial difficulties, but that as a result of increasing industrial activity and a "substantial increase" in

²Ibid., p. 6.

railroad rates granted by the Interstate Commerce Commission, the financial position of the railroads concerned was improving.³

The employees also requested that the carriers accept the terms of the vacation plan as incorporated in the Chicago mediation agreement of December 17, 1941.⁴ This plan granted a vacation of six consecutive work days with pay for those employees who had served 160 days or more during the preceding year. A majority of the carriers conceded the value of a vacation plan to their employees, but they objected to the Chicago vacation agreement because of the anticipated additional cost. It was felt that the requirement to provide vacation relief workers might be used to create unnecessary jobs for the employees, and that the costs involved would be excessive. Five of the carriers challenged the validity of a vacation plan during the emergency, contending that the vacation agreement, as proposed, would waste manpower and hamper the defense effort. Commenting on this position, the board stated:⁵

The time is past when anyone can seriously challenge the fact that properly conceived and

³Ibid., pp. 13-16.

⁴The so-called Chicago mediation agreement was actually executed on two different dates; the wage agreement on December 15, 1941, and the vacation agreement on December 17, 1941.

⁵Report to the President by the Emergency Board Appointed July 21, 1942 from National Railway Labor Panel, p. 19.

properly administered vacations substantially improve the morale and the personal efficiency of the individual worker. The Board is of the opinion that this principle and practice is of peculiar significance in a period of emergency when the tempo of all industry has been substantially accelerated, resulting in additional strain on the individual worker. Moreover, the Board takes notice of the fact that the practice of granting vacations with pay is increasingly being adopted in industry generally.

In rendering its report to the President on September 14, 1942, the Emergency Board made the following recommendations:⁶

1. That the carriers here involved shall increase basic rates of pay of the employees in accordance with the provisions of the Chicago wage agreement of December 15, 1941

2. That the effective date of the wage increases . . . recommended shall be December 1, 1941.

3. That these increases in rates of pay shall be added to the rates of pay in existence on May 31, 1941.

4. That the basic minimum rate of pay of all class I carriers involved and of the Addison Miller Co., the Burlington Refrigerator Co., the Fruit Growers Express Co., and the Western Fruit Express Co., shall be 46 cents per hour effective December 1, 1941, and that the basic minimum rate of pay of all other carriers included in these proceedings shall be 43 cents per hour effective December 1, 1941.

5. That in the computation of back pay subsequent to December 1, 1941, carriers which have made adjustments or paid bonuses subsequent to June 1, 1941, shall be entitled to credits and offsets for such increases or bonuses, provided that this recommendation shall not be construed to reduce the rate of pay of any employee.

6. That the carriers involved may, if they so elect, meet the back pay due under these

⁶Ibid., pp. 28-29.

recommendations in six installments, payable monthly, beginning with the pay day nearest November 1, 1942.

7. That all of the carriers involved in these proceedings shall accept the terms and conditions of the Chicago vacation agreement of December 17, 1941, effective for the year 1942.

Both labor and management accepted the recommendations of the Emergency Board, and in this manner a dispute which actually originated in 1940 and was heard by two Emergency Boards was finally resolved. In the meantime, a controversy had developed between virtually all of the nation's carriers and the Brotherhood of Locomotive Engineers together with the Brotherhood of Locomotive Firemen and Enginemen. Political influence, which first appeared evident in the national wage movement of 1941, played an important part in the eventual settlement of this dispute and served to strengthen a precedent which was to be followed in future controversies.

The "Diesel Locomotive Case" of 1943

The so-called "Diesel Locomotive Case" of 1943 actually developed as two separate disputes between the nation's railroads, on one hand, and the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers, acting independently, on the other. On May 10, 1941, the Brotherhood of Locomotive Firemen and Enginemen submitted demands to every carrier in the United States with which it had an agreement for a revision in the method by which basic daily wage rates were computed. The Brotherhood also

requested the elimination of the wage differentials prevailing between the eastern, southeastern, and western carriers, and the adoption of a rule which would require that a fireman be employed on each unit of a multiple-unit Diesel-electric locomotive. The Brotherhood first attempted to secure conferences on these proposals on a national basis, but, since the carriers refused, negotiations were inaugurated with the carriers in western territory, represented by the Western Carriers' Emergency Board.⁷

The dispute between the carriers and the Brotherhood of Locomotive Engineers originated from formal demands made upon the western and southeastern railroads in December, 1937. The Brotherhood proposed that a supplementary agreement be executed which would provide for the wages of engineers to be determined on the basis of the rated horsepower developed by the "prime mover," i.e., by the engine. This proposal was to apply to locomotives powered by internal combustion engines or steam-powered turbines. It was also requested that a list of locomotive engineers be designated as "assistant engineers" and that such an engineer be employed in the engine room of each unit of certain types of locomotives, regardless of the number of units which might be used in combination. These

⁷For a discussion of these developments, see Report to the President by the Emergency Board Appointed February 20, 1943, From the National Railway Labor Panel (Washington: Government Printing Office, 1943), pp. 2-4.

proposals reached the conference stage with the carriers during 1941, but as in the case of the Brotherhood of Locomotive Firemen and Enginemen, negotiations were suspended until the wage movement of 1941 was completed. Conferences on these issues were resumed in October, 1942, between the western and southeastern carriers and the Brotherhood. However, these negotiations failed, and the National Mediation Board was requested to intervene.⁸ The Mediation Board was unable to settle the controversy, and when arbitration was refused, the issues were presented to an Emergency Board.⁹

On February 20, 1943, the Chairman of the National Railway Labor Panel, upon notice from the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers of "their desire to avoid the taking of strike votes and the setting of strike dates," appointed a single Emergency Board to investigate and report to the President on these two disputes. The Board consisted of Frank Swacker (chairman), George W. Stocking, and John A. Lapp, all members of the National Railway Labor Panel. This action was taken even though the proposals of the two brotherhoods were separate and distinct and had been negotiated independently.

⁸It should be noted that the eastern carriers were not a party to this dispute, although these proposals were in the negotiation stage with the eastern carriers at the time this Emergency Board was appointed.

⁹Ibid., pp. 5-6.

These two disputes in at least one respect (the manning of Diesel-electric multiple-unit locomotives) represented a jurisdictional conflict between the two unions, and the Emergency Board was confronted with the task of deciding which of the two organizations were to provide the manpower for such operations, and of determining how many additional employees were needed.

The Emergency Board convened in Chicago, on March 1, 1943, and submitted its report and recommendations on May 21, 1943. During the hearings, all parties were given an opportunity to present their testimony and arguments, and they were also allowed to examine and cross-examine witnesses. For a better understanding of the issues in this dispute, some amplification of the demands of the two labor organizations is necessary. The demands of the Brotherhood of Locomotive Firemen and Enginemen may be considered under three general headings. First, it was requested that a new system be substituted for the existing method of determining basic daily wage rates for firemen and enginemen by classifying locomotives on the basis of the weight on the power-driven wheels of the engine and graduating wages according to such a classification. Under the new system, steam locomotives would be classified on the basis of the total weight of the engine on all wheels, and Diesel-electric locomotives would be grouped according to their rated horsepower, as guaranteed by the

manufacturer. Wages would be graduated in accordance with this new classification. It was also proposed that a new schedule of basic wage rates be developed in conjunction with this classification for both engineers and firemen in passenger, freight, and yard service. This proposed wage scale involved substantial increases in the prevailing rates of pay for these employees.

In its second proposal, the Brotherhood demanded that the existing differentials in the wages of firemen be eliminated by raising their wages on electric locomotives to the level existing on steam locomotives and by increasing the rates on oil-burning steam locomotives to the level prevailing on coal-burning locomotives. It was also requested that the wage level of firemen in the west and southeast be increased to the level of those in the east.

The third proposal of the Brotherhood was that a fireman be employed in the multiple-unit operation of any locomotive, other than a steam locomotive, on each unit of the combination, regardless of the number of units operated. This demand was predicated on the fact that prevailing practice utilized only one fireman on Diesel-electric locomotives and electric locomotives, without regard to the number of units that might be operated as a combination. On Diesel-electric locomotives weighing less than 90,000 pounds, the carriers did not employ a fireman.¹⁰

¹⁰Ibid., pp. 11-17.

The demands of the Brotherhood of Locomotive Engineers were quite similar to those of the firemen and enginemen. It was requested that a new wage schedule be developed for engineers on locomotives powered by internal-combustion engines and steam-powered turbines.¹¹ Wages would be determined on the basis of the horsepower developed by the engine, and the rated horsepower would be ascertained by the use of brake tests as devised by engineering consultants to the brotherhood. The proposed schedule represented a substantial increase in the existing pay rates. The second major proposal of the locomotive engineers was that a working list be developed from the engineering class and that employees on this list be designated as "assistant engineers" to be employed in the engine room of each unit of a multi-powered internal-combustion locomotive.¹² It was this proposal which created the sharp jurisdictional conflict between the two brotherhoods.

The Brotherhood of Locomotive Firemen and Enginemen, in supporting its demand for a new wage schedule, contended that it was designed to eliminate inequities which had developed in the existing wage structure. It was maintained that the "principle of productivity" had long been recognized in

¹¹The latter proposal was made in anticipation of the development of the steam-turbine engine, but, since the development was not realized, the proposal was later withdrawn.

¹²Ibid., pp. 40-43.

determining the proper wage relationship among engine crews operating different types of locomotives, and that the existing wage schedule did not incorporate the changes in "productivity" which had occurred as new locomotives were introduced. Under the "productivity principle," the schedule of wage rates is designed to relate the basic wage of the enginemen to the "productive capacity" of the locomotive and to vary the wage schedule with changes in "productive capacity." In connection with this argument, the Emergency Board stated:¹³

The term "productive capacity" as thus used has not been subjected to precise definition. It has been used variously to mean the ability of a locomotive "to haul a larger load," to haul at a higher speed, to do a large business, or to produce more revenue; in general, to perform more efficiently. The "principle of productivity," while lacking in precise definition, is designed to permit the engineman to share in the gains of improved locomotive performance.

In addition, it was maintained by the firemen and enginemen that the use of the weight of the locomotive which rested on the driving wheels as an index of its "productive capacity" was no longer satisfactory since changes in engine design had shifted a large proportion of the locomotive's total weight to non-power-driven wheels. Since the increase in the total weight of a locomotive reflects the increase in its "productive capacity," the continued use of the weight

¹³Ibid., p. 14.

resting on the driving wheels alone, as the basis for a wage schedule, was inaccurate and unjust, for it worked to deprive the enginemen of gains in productivity achieved by newer and larger locomotives.

The arguments of the Brotherhood of Locomotive Engineers concerning the new wage schedule were quite similar to those of the firemen and enginemen except that a different basis was selected for the proposed pay rates. It was contended that the wage schedule should be based on the rated horsepower of the locomotive, as this was the best indication of the "productive capacity" of the engine, and that "productive capacity" had always been recognized as the proper basis for the establishment of wage rates. In addition, the engineers maintained that the Diesel-electric locomotive constituted a new type of power unit and that wage rates had never been negotiated for this type of engine. The use of the wage schedules in effect on steam locomotive operations for Diesel-electric locomotives was "arbitrary and unfair" and, the brotherhood contended, until a new wage scale was established, none existed.¹⁴

The carriers, in replying to the arguments of the two brotherhoods in support of a new wage schedule, emphatically denied that the "principle of productivity" had been the basis

¹⁴Ibid., pp. 40-43.

for existing pay rates or that it afforded on adequate basis for new rates. They recognized that the weight on the drivers of a locomotive served as an index to the amount of labor required of a fireman in shoveling coal into a hand-fired steam locomotive, and it was maintained that this weight continued to provide a measure of the "effort, responsibility and skill" required of the engine crew. The railroads contended that changes in "productive capacity" were due to changes in engine design and mechanical improvements which represented capital investment by the carriers, and that to adjust wages on the basis of greater productivity due to such capital investment would introduce inequities into the wage structure rather than eliminate them.

In addition, it was argued that the increased productivity of the new locomotives was partially due to capital outlay for many other improvements; tracks had been relaid, grades and curves improved, bridges and trestles had been rebuilt and strengthened, and yard and terminal facilities had been enlarged. The carriers maintained that the first claim upon this capital investment was an adequate return to capital; and secondly, that transportation service should be provided for the public at lower costs. Finally, the carriers argued that the proposed wage schedules based on the "principle of productivity" were in disregard of the efficiency of steam locomotive service and provided rates for the operation of

Diesel-electric locomotives which were much higher than for steam locomotives capable of providing the same service. The carriers acknowledged certain advantages of Diesel locomotives, but it was stated that "no Diesel locomotive has yet been built which is capable of general transportation performance which cannot be equaled by steam locomotives."¹⁵

The second major issue in this controversy was the manning of Diesel-electric locomotives. Prior to the hearings before the Emergency Board, both the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers had demanded that the carriers employ an additional man from the ranks of the respective organizations to work in each unit of a multiple-unit locomotive. This demand was the source of a jurisdictional conflict which the two brotherhoods had attempted to resolve without success and, therefore, their positions were presented independently to the Board. However, perhaps realizing that the request for one man to be employed on each unit of a multiple-unit assembly was untenable, the Brotherhood of Locomotive Engineers modified its request during the hearings and asked for an "assistant engineer" to be placed on single and multiple-unit assemblies up to and including four units. The Brotherhood of Locomotive Firemen and Enginemen then modified its demand by requesting that an

¹⁵Ibid., pp. 18-21 and 43-44.

additional fireman (helper) be employed on multiple-unit locomotives up to four units. Both brotherhoods, in effect, conceded that only one additional man was required, but each organization desired that the employee be drawn from its ranks.

The brotherhoods, in supporting their request for an additional man, contended that such an employee was necessary in order to eliminate unnecessary operating hazards, and testimony was submitted which indicated that a fireman on a diesel-electric passenger run was away from the control cab of the locomotive performing duties in the engine room between 50 and 85 per cent of his time. On many passenger trains, the scheduled running time exceeded 60 miles per hour and at times an operating speed in excess of 90 miles an hour was attained. It was contended that under such operating conditions, one man was required in the control cab with the engineer at all times, and that an additional man was necessary to service the equipment in the engine room.

As proof of the hazards involved, the organizations called the attention of the Emergency Board to three recent wrecks, in each of which the fireman was not in the control cab at the time. The Interstate Commerce Commission, in investigating one of these wrecks, called particular attention to the fact that existing operating practices required the fireman to be back in the engine room 85 per cent of his

time.¹⁶ In discussing this question, the Emergency Board described the usual operating practice as follows:¹⁷

Diesel locomotives are constructed with a control cab at the front end. Immediately back of the cab is the engine room housing the Diesel engines which generate the electric power that is transmitted to the driving wheels. Most of the machinery in the engine room is enclosed. There are gages and other indicators which need frequent inspection to insure that everything is working properly. There are ventilating shutters which need to be regulated, and there are purifiers, i. e., oil filters, which need to be adjusted from time to time. In passenger service there is also a steam boiler, supplying hot water and air conditioning for the train, the operation of which requires supervision. It is the fireman's duty to patrol this engine room and perform these services. When not so engaged he occupies the left-hand seat in the control cab, where he watches for signals and exchanges them with the engineer in accordance with usual operating practice and rules applicable on steam engines

Diesel locomotives are customarily equipped with an automatic stop or control which is designed to apply the brakes if anything should happen to the engineer which would cause him to take his foot off the control pedal. While this theoretically would bring the engine to a stop if, for example, the engineer had a stroke or dropped dead, as has happened, it has not always done so in practice. At least one instance was brought to the attention of the Board where the engineer had died in his seat and fallen forward on the control, with his weight continuing to rest on the pedal. At high speeds, with signals rapidly fleeting by, with the fireman away from the cab 15 or 20 minutes at a time, if anything should happen to the engineer adverse signals might go entirely unobserved. Under perfect operating conditions, with everything favorable, the danger of accident appears to be comparatively slight. But it is operation

¹⁶ Ibid., p. 50.

¹⁷ Ibid., p. 48.

under adverse conditions and in emergencies that requires the utmost care, and it would appear that safety requires that trains be manned for the possibility of adverse conditions.

The carriers did not strenuously oppose the request of the brotherhoods for an additional man in the engine room of Diesel-electric locomotives in passenger service, but they did object to this proposal for freight and yard service and local passenger operations. The carriers pointed out that automatic equipment for the servicing of the engine room, which could be observed from the control cab, had been installed with the first passenger Diesels placed in service, but that this equipment was later discontinued. It was suggested that, if an additional man was to be required in all types of service, the automatic equipment would be reinstalled so that the fireman could remain in the control cab at all times.¹⁸

The Emergency Board concluded its hearings on April 29, 1943, and on May 21 it submitted its findings and recommendations to the President. In reference to the wage demands of both the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers, the Board recommended that the existing method of determining basic daily wage rates, by relating them to the weight of the locomotive on the power-driven wheels, be retained. However,

¹⁸Ibid., p. 52.

an increase of from 5 to 10 cents in the basic hourly rate was suggested for those employees who operated certain types of locomotives weighing more than 350,000 pounds. This increase was to progress as the weight of the locomotive increased. The Board also found that the proposal of the Brotherhood of Locomotive Firemen and Enginemen to eliminate the regional wage differentials, as well as the differences in wages for firemen among different types of locomotives, should be denied. In this connection, the Emergency Board stated:¹⁹

Despite the fact that the Board sees no justification for a continuation of these differentials, since they were the result of an arbitration award in 1927 and have persisted since that date through numerous wage movements and settlements in the opinion of the Board, they are not inequities of the sort which may appropriately be eliminated under the wage stabilization program. The Board, therefore, does not recommend their elimination.

The Emergency Board, in disposing of the demands of the two brotherhoods in reference to the manning of Diesel-electric locomotives, recommended that on high-speed through passenger trains two men should always be on duty in the control cab while the train was in motion, and that if such a requirement necessitated the employment of an additional man, he was to be selected from "the ranks of the firemen." The Board found no necessity for an additional man on the

¹⁹Ibid., p. 37.

locomotive in yard and freight service or local passenger service. However, in the event that the carriers found it necessary to employ an additional man to aid the fireman in through fast freight service, he was to be drawn from the firemen's ranks.

In concluding its report, the Emergency Board made the following statement:²⁰

If the adjustments as recommended above are made, they will affect only a relatively small percentage of enginemen and will add to the total annual wage bill of carriers a relatively insignificant sum. The carriers have estimated that if all the proposals of the two brotherhoods were adopted, it would add approximately \$12,000,000 to the annual wage bill. The cost of adopting the recommendations of the Board will represent only a small percentage of this amount . . . we believe the cost will represent only about one-tenth of one percent. Acceptance of the Board's recommendations will, therefore, have no appreciable effect upon the level of production cost in railroad transportation

On May 27, just six days after the Emergency Board filed its report, the Brotherhood of Locomotive Firemen and Enginemen sought and obtained a conference with the President. The Brotherhood expressed the dissatisfaction of the employees with the recommendations of the Emergency Board and, as a result, the President, on May 29, wrote a letter to the Association of American Railroads in which the carriers were requested to resume direct negotiations with the employees

²⁰Ibid., p. 64.

"for the purpose of endeavoring to resolve the points in question" and to insure "the full and adequate prosecution of our war program."²¹

The carriers complied with the President's request and conferences began on June 18 between committees representing the railroads in eastern, western, and southeastern territory and the two brotherhoods. As a result of these negotiations, agreements were eventually executed by both of the railroad labor organizations with the carriers in each of the three territories. The final settlements are described by a railroad publication in the following manner:²²

These agreements, in general, followed the basic principles recommended by the Emergency Board. The first of the territorial agreements, negotiated in the east, integrated the old and new wage rates--the old rates continuing generally applicable to the theretofore existing scales of weight gradations; the new rates, somewhat higher than those recommended by the Emergency Board, applying to the extended weight gradations. In the western and southeastern territories the agreements provided for the same scales of rates and weight gradations as had been agreed upon in the eastern territory. Agreements, similar in principle, were also entered into with the Brotherhood of Locomotive Engineers covering the rates of pay of all engineers represented by that organization. Thus, the slight differentials in wage rates as between the three territories, which had theretofore existed, were eliminated by equalizing the rates in the western territory (except for engineers on Mallet type locomotives) and southeastern territory with the rates in eastern territory.

²¹Quoted in Railroad Wages and Labor Relations, 1900-1946, The Executive Committee of the Bureau of Information of the Eastern Railways (New York: June, 1947), p. 127.

²²Ibid., pp. 127-128.

During the latter part of 1942 and the early months of 1943, two new disputes were developing at the same time that the two controversies just considered were being negotiated and eventually settled. One of these disputes involved the fourteen so-called non-operating organizations, joined by the Hotel and Restaurant Employees' International Alliance (which represents dining car cooks and waiters), and virtually all of the railroads in the United States, including the Railway Express Agency, five refrigerator car companies, and two stockyard companies. The railway labor organizations requested a union shop and a wage increase of 20 cents an hour with a minimum wage for all employees of 70 cents an hour. The other dispute originated in a demand by the five operating organizations upon the railroads of the nation for an increase in the basic daily wage rate of 30 per cent with a minimum increase of \$3.00 per day. It was this dispute which led to government seizure and operation of the railroads on December 28, 1943. Government control of the carriers continued until January 18, 1944, at which time they were returned to private management.

The Wage Dispute Between Fifteen Cooper-
ating Labor Organizations and the
Nation's Railroads During 1943

On September 25, 1942, the fourteen non-operating organizations, together with the Hotel and Restaurant Employees' International Alliance, submitted a demand to the railroads of

the nation for a union shop agreement and an increase in wages of 20 cents per hour with a minimum wage for all employees of 70 cents an hour. Negotiations were first conducted on the individual properties, but as these meetings were unsuccessful, joint conferences were instituted by committees representing the labor organizations and the carriers in New York, N. Y., on December 15, 1942. Because the parties were still unable to reach an agreement, on December 18 the employees invoked the services of the National Mediation Board which met with the parties in a series of conferences from January 7, to January 15, 1943. As mediation of the issues proved unsuccessful, the Board proposed that the parties submit the controversy to arbitration. The labor organizations refused arbitration, but the carriers' committees, representing the western and southeastern railroads, were willing to arbitrate the wage dispute. However, these carriers refused to arbitrate the demand for a union shop which they considered illegal under the Railway Labor Act. The carriers in the East declined to arbitrate either issue, contending that a union shop was prohibited by the Act and that the wage demand was not in accordance with the Stabilization Act of 1942.²³

On January 20, 1943, the employee organizations notified the Chairman of the National Railway Labor Panel that the

²³Ibid., p. 118.

parties had failed to settle the dispute and requested that an Emergency Board be appointed to investigate and report to the President upon the controversy. The appointment of this Board was delayed until it became clear whether its findings would be subject to review by the National War Labor Board. This question was resolved by the President on February 4, by Executive Order 9299, which provided that the recommendations of an Emergency Board were to become effective at the end of thirty days "unless and except to the extent that the Economic Stabilization Director shall otherwise direct." Since it appeared that the National Railway Labor Panel would have primary jurisdiction over the dispute, the Chairman of the Panel, on February 20, appointed an Emergency Board composed of I. L. Sharfman (Chairman), Walter T. Fisher, and John A. Fitch.

The Emergency Board convened in Chicago, Illinois, on March 1, and public hearings were held through May 7. At the close of the hearings, the Board attempted to resolve the dispute by mediation, but it was unsuccessful. The Board submitted its report to the President on May 24, 1943.

Apparently, the demand for a union shop was submitted by the labor organizations as a bargaining argument to be conceded in return for the full wage increase sought, for very little testimony was submitted to the Emergency Board to justify this demand. The major contention of the employees was

that the existing wage scale contained "gross inequities" which could only be eliminated by a substantial wage increase. The carriers, in turn, maintained that the pay increase would be inflationary and in contradiction to the wage stabilization policy of the government. As previously pointed out, all of the carriers contended that a union shop agreement would be in violation of the Railway Labor Act.

The Emergency Board, in submitting its recommendations, discussed at length the wage movements of the non-operating organizations in the past, the existing condition of the railroad industry, and the government program for combating inflation. In connection with the wage demands of the employees, the Board made the following comments:²⁴

The average earnings of the 73 classes of non-operating railroad employees involved in this dispute, embracing skilled, semiskilled, and unskilled workers, as of October, 1942, were 73.8 cents an hour. The prevailing minimum wage for these employees is 46 cents an hour

Various crafts or classes of railroad workers involved in this dispute, including, for example, carpenters and machinists, receive sharply lower wage rates than those paid to comparable groups in nonrailroad industries. Even when the high rates paid in swollen war industries . . . are entirely eliminated, railroad employees still receive substantially lower wage rates than comparable groups of employees in outside industries While the miscellaneous character of the data renders it impossible to arrive at a precise over-all measurement of these differentials,

²⁴ Report to the President by the Emergency Board Appointed February 20, 1943, Pursuant to the Railway Labor Act, May 24, 1943 (Washington: Government Printing Office, 1943), pp. 6-7.

the hourly wage rates in these comparable outside industries, even after the exclusion of the exceptionally high rates, are on the average probably 10 cents higher than in the railroad industry

On July 16, 1942, in the Little Steel case, the National War Labor Board fixed the minimum rate in the steel industry for common labor at 78 cents per hour, which is substantially in excess of the average hourly earnings of the 73 classes of railroad employees.

On a craft or class basis, 40 of the 73 classes of railroad employees, embracing in the aggregate slightly more than 400,000 workers, have not received the full 15 percent increase in straight-time average hourly earnings since January 1941 provided for under the Little Steel formula as a cost-of-living adjustment.

The Emergency Board recommended, in the conclusion of its report, that the fifteen labor organizations be granted an increase of 8 cents per hour in their basic wage rates. The increase was to be effective retroactive to February 1, 1943. The demand for a union shop was denied, as the Board held that such an agreement "would compel the carriers to violate clear provisions of the Railway Labor Act" and force them to "acquiesce in the adoption of this policy in the railroad industry without an adequate showing in the record as to its need or utility or implications."²⁵

On June 22, 1943, the Director of Economic Stabilization, Fred M. Vinson, issued an order in which he held that the recommendations of the Emergency Board should not be applied since changes in stabilization policy no longer permitted

²⁵Ibid., pp. 14-15.

wage rates to be adjusted on the basis of interindustry comparisons, and that such adjustments should be made in conformance with existing wage rates in local labor markets.²⁶ He suggested that the Emergency Board reconvene and revise its recommendations in accordance with this directive. However, the Chairman of the Emergency Board, I. L. Sharfman, maintained that he did not have the authority to rehear the dispute, and the chairman of the National Railway Labor Panel declined to reconvene the Emergency Board.²⁷

The cooperating railway labor organizations strongly protested the action of the Stabilization Director and threatened to take a strike vote, but after a series of conferences with the President and the Director of Stabilization, the unions agreed to attempt to negotiate a settlement with the carriers which would be acceptable under the stabilization program. This agreement, which was reached by the parties on August 7, 1943, provided for an increase of 8 cents per hour in the basic wage rate of the employees with a minimum wage of 54 cents per hour.²⁸ Since this agreement provided for virtually the same increase that the Emergency Board had recommended, it was rejected by the Economic Stabilization Director.

²⁶ See Railroad Wages and Labor Relations, 1900-1946, p. 120.

²⁷ Ibid.

²⁸ Ibid.

There were no further important developments in this controversy until October 16, 1943, at which time the President appointed a "Special Emergency Board" to reconsider the dispute.²⁹ This Board consisted of three members, Elwyn R. Shaw (Chairman), Richard F. Mitchell, and Walter C. Clephane.³⁰ The Board held a public hearing on October 28, and all of the parties who appeared before the original Emergency Board, re-submitted their arguments. A report was rendered on November 4, in which the newly created Board recommended that the agreement reached by the parties to the dispute on August 7 be amended by granting the employees an increase in wages ranging from 4 cents an hour for the highest paid workers to 10 cents an hour for those receiving less than 47 cents per hour.

These recommendations were approved by the Director of Economic Stabilization on November 8, but in the meantime, the employee organizations began the circulation of strike ballots among their members. At the same time, the organizations arranged for joint resolutions to be introduced in Congress which would have authorized the 8 cents per hour increase agreed to by the parties in the settlement of August 7. The Senate passed such a resolution on December 9, but the House

²⁹ *Ibid.*, p. 122.

³⁰ Although these men were members of the National Railway Labor Panel, the Annual Reports of the National Mediation Board contain no record of this appointment.

of Representatives deferred its action until after the Christmas recess. The organizations, therefore, announced a national strike to become effective December 30, 1943.³¹

At this point, the dispute between the non-operating organizations and the carriers became associated with the controversy which had been developing between the five operating organizations and the nation's railroads, so that the development of the latter dispute should be considered for a better understanding of the final settlement in these two national wage movements.

The Wage Dispute of 1943 Between the Nation's
Railroads and the Five Train and Engine
Service Brotherhoods

On January 25, 1943, the five so-called operating organizations submitted the following demands to the nation's carriers:³²

That effective March 1, 1943, all existing basic daily wage rates be increased thirty (30) percent, with a minimum money increase of \$3 on the minimum day. The same percentage of increase applied to the basic day will be applied to all arbitraries, miscellaneous rates, special allowances, and to daily and monthly guaranties.

This notice was submitted to the carriers on the individual properties, but the railroads made a joint reply to

³¹ Railroad Wages and Labor Relations, 1900-1946, p. 123.

³² Report to the President by the Emergency Board Appointed May 31, 1943 Pursuant to the Railway Labor Act, September 25, 1943 (Washington: Government Printing Office, 1943), p. 5.

these demands. The chairmen of the three carrier's conference committees advised the chief executives of the five labor organizations that they were willing to confer with the employee representatives on these issues, and negotiations began between the parties on February 16, 1943. During these conferences, the railroad representatives informed the employee organizations that, in their view, the wage stabilization policy of the government prohibited them from granting a general wage increase. Direct negotiations were suspended and the National Mediation Board was requested to intervene in the controversy on February 18, 1943. From February 18 through February 23, the Chairman of the Mediation Board attempted to resolve the dispute, but he was unsuccessful. The parties were then requested to submit the issues to arbitration. Both the carriers and the labor organizations refused arbitration, and on February 23, the employee organizations notified the Chairman of the National Railway Labor Panel that direct negotiations and mediation had failed to settle the dispute, and the appointment of an emergency board was requested. Since emergency boards, at that time, were hearing the dispute between the carriers and the firemen and engineers in the "Diesel Locomotive Case," as well as the dispute between the carriers and the non-operating employees in the national wage movement of 1943, the five operating brotherhoods agreed to await the disposition of these cases before

submission of their demands to an emergency board.³³

The emergency boards in the above disputes submitted their reports near the end of May, and the Chairman of the National Railway Labor Panel, on May 31, appointed an Emergency Board consisting of Walter P. Stacy (Chairman), I. L. Sharfman, and Frank M. Swacker to investigate this controversy and submit a report to the President.³⁴ This Emergency Board met in New York City on June 6, and public hearings began on the following day. Hearings were continued through July 15, at which time the Board closed the proceedings and announced that it desired "to explore the possibilities of effecting a settlement through joint conferences." Efforts to resolve the dispute continued and conferences were held by the parties together with the Board in New York City on September 10 and 11. Since these negotiations were not successful, the Emergency Board prepared a report and submitted its recommendations on September 25, 1943.

During the hearings before the Board, the operating employees advanced several arguments to support their demands. It was contended that the wage level in the railroad industry was very low when compared to prevailing wages in other industries, that the workers were entitled to an advance in

³³Ibid., p. 6.

³⁴I. L. Sharfman served as Chairman of the Emergency Board in the wage dispute of the non-operating employees.

wages due to their "increased productivity," that railroad employment was extremely hazardous, that the carriers were unable to obtain needed additional manpower due to the existing low level of wages, and finally, that the earnings of the carriers were adequate to sustain a substantial increase in the wages of their employees. The carriers made no attempt to deny that their financial condition was improving, but it was argued that existing earnings were necessary to offset deficits incurred in the past and that high earnings should not be anticipated for an indefinite period in the future. It was also maintained that wage levels in the railroad industry could not properly be compared with those in other industries by disregarding the "temporary and chaotic" nature of such employment in comparison with the "far more stable nature of railroad employment and wage rates."³⁵

On submission of the Board's report, Walter P. Stacy, the Chairman of the Emergency Board, and I. L. Sharfman, made the following findings and recommendations:³⁶

On the basis of the entire record, as analyzed in the foregoing pages, it is the opinion of the Emergency Board that the employees involved in this dispute have made out a strong case for a wage increase to correct gross inequities and to aid in the effective prosecution of the war.

In view, however, of the order of the Economic Stabilization Director of June 22, 1943, and his

³⁵Report to the President by the Emergency Board, pp. 11-60.

³⁶Ibid., p. 84.

memorandum opinion of June 30, 1943, in the non-operating case, this Board is compelled to conclude that, there being no sub-standards of living in the present dispute, the operating employees may be granted such increase only as may be justified under the Little Steel formula.

Since January 1941 the train and engine and yard service employees, as a group, have received an increase of approximately 10.5 percent on the basis of average straight-time hourly earnings, as of that date, of 89.9 cents. Hence, in order to give effect to the full 15-percent increase of the Little Steel formula, they are entitled to a further increase of 4-1/2 percent of the base rate, which increase amounts to 4 cents an hour.

The Board recommends, therefore, that the employees involved in this dispute receive an increase of 32 cents per minimum basic day or 4 cents per hour, to become effective as of April 1, 1943.

Mr. Frank M. Swacker wrote a vigorous dissent from the majority recommendations of the Emergency Board.³⁷ He held that the Board had failed "to discharge its functions" by not making a specific finding "of fact as to the extent of the gross inequities to which these employees are subject," and maintained that the majority of the Emergency Board was in error in believing that their recommendations should be limited by the "Little Steel formula" as established and interpreted by the Director of Economic Stabilization. Accordingly, he made the following statement:³⁸

I therefore believe it was our duty to make a specific recommendation for an increase of 7-1/2 percent in the basic wage rates of these employees.

³⁷Ibid., pp. 85-88.

³⁸Ibid., p. 88.

If we were wrong as a matter of law in our interpretation of the stabilization program, it would be simple enough to correct our error. Doing as the majority does, however, should the majority be wrong in its construction of the stabilization program, the men are left empty-handed by that error, although they have pursued the only course open to them under their agreement with the President for the adjustment of their grievances.

The five operating organizations bitterly denounced the wage increase recommended by the majority of the Emergency Board and refused to accept its findings. A strike ballot was spread among the employees, and on December 17, the labor organizations announced that the employees had voted to strike December 30, 1943. In the meantime, the Director of Economic Stabilization approved the 4 cent an hour increase in basic wages recommended by the Board, and the carriers applied this increase to the wages of the operating employees effective October 26, 1943.³⁹

The Dispute Settlement of 1943

Since both the operating and non-operating organizations had announced their intention to strike on December 30, the President of the United States personally intervened on December 21, in an effort to settle the two disputes. Conferences were held at the White House attended by representatives of the carriers, the executives of the labor organizations concerned, and various government officials. The

³⁹ Railroad Wages and Labor Relations, 1900-1946, p.

President's efforts at mediation failed, and on December 23, he proposed to both the operating and non-operating organizations that the dispute be settled by arbitration, the President to act as the sole arbitrator. This offer was accepted by the carriers and by two of the operating organizations, the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen. The remaining three operating organizations refused to consider the arbitration proposal, while the non-operating organizations announced that they desired to "take the President's proposal under consideration."⁴⁰

On the following day, December 24, the two operating organizations that had accepted the President's offer of arbitration cancelled their strike notice, and on December 27, the non-operating organizations announced that they would not strike. However, as the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America gave no indication of cancelling their strike, the President issued an Executive Order, on December 27, 1943, taking possession of the nation's railroads and providing for their operation through the War Department.

On the same day, the President rendered his decision as an arbitrator in the engineer's and trainmen's dispute. He affirmed the recommendations of the majority of the

⁴⁰Ibid., p. 123.

Emergency Board for an increase of 4 cents per hour in the basic wage rate, and to this he added an additional 5 cents per hour, effective as of the date of the award. The additional increase was granted in lieu of new demands for expenses while away from home and for time and one-half for overtime in excess of forty-four hours per week presented by the employees during White House conferences. He also directed "that employees shall be entitled to a vacation of one week a year with pay at the basic hourly rate of employment."⁴¹ This award, which was approved by the Director of Economic Stabilization, was to be effective for the duration of the war.

The remaining operating organizations, the firemen, conductors, and switchmen, did not execute their strike threat, and following additional negotiations with the carriers, these labor groups accepted a settlement which provided for the same wage increases and the vacation authorization awarded the engineers and trainmen by the President. This agreement was reached on January 14, 1944, and, since the organizations formally cancelled their strike order at the same time, the War Department permitted the carriers to put the settlement into effect.⁴²

⁴¹Ibid., p. 124. Vacations were not an issue before the Emergency Board.

⁴²Ibid.

The non-operating organizations were the last group to reach a settlement. On December 27, 1943, they announced that they would accept the recommendations of the Special Emergency Board which had recommended an increase of from 4 to 10 cents per hour in a graduated scale, provided the President would arbitrate the overtime issue which had developed from an offer made to the operating employees prior to the final settlement of that dispute. The non-operating organizations desired overtime for all time in excess of 40 hours per week, which was one of the proposed terms in a settlement offered the operating organizations during mediation. The President refused to arbitrate the overtime issue if he could not consider its effect upon the proposed wage scale, and the employees refused to submit both issues to arbitration.

As an escape from this dilemma, the President reconvened the Special Emergency Board on January 4, 1944, to consider the claims of the non-operating employees for overtime, or for an additional wage increase in lieu of overtime payments. The Board opened hearings in Washington on January 10, but in the meantime the carriers and the employees had resumed direct negotiations. These conferences were continued with the aid of the Board, and on January 17 the parties reached a settlement. The agreement provided for the acceptance of the original recommendations of the Special Emergency Board which had suggested wage increases running from 4 to 10 cents per

hour in a graduated scale. This wage increase was retro-active to February 1, 1943. To this increase was added an amount in lieu of overtime ranging from 1 to 5 cents per hour, to become effective December 27, 1943. The total wage advance agreed upon ranged from 11 cents per hour for employees receiving the lowest wage rates to 9 cents an hour for those in the highest wage groups.⁴³ This agreement was approved by the Director of Economic Stabilization on January 18, 1944. All of the major wage disputes had been resolved and the railroads were returned to private management on the same day.

Summary

During 1942 and 1943, four disputes developed between labor and management which were of national interest. One of these controversies was in reality a continuation of a dispute between the non-operating organizations and the carriers which began in 1940. The Emergency Board which had heard the original dispute had made special recommendations for 18 short line railroads, holding that a basic minimum wage of 40 cents per hour should be established and that additional wage increases and a vacation plan should be agreed upon by the parties through direct negotiations. As the parties were unable to negotiate their differences, this dispute came before a new Emergency Board in 1942.

⁴³Ibid., p. 124.

Prior to and during the hearings before the new Board, several of the carriers were able to resolve their differences with the non-operating organizations. The settlements obtained represented the acceptance of virtually the same agreement reached by most of the nation's carriers in the original dispute. For the railroads which had not achieved a settlement, the Emergency Board recommended acceptance of the same terms. This finding was predicated on the fact that the financial condition of the railroads concerned was improving because of increased industrial activity and a "substantial increase" in railroad rates granted by the Interstate Commerce Commission. The recommendations of the Emergency Board in this dispute must be supported as there appeared to be very little justification for a settlement with these carriers differing from the agreements reached by most of the nation's railroads. In fact, to have recommended a different settlement would have created inequities and caused labor unrest throughout the railroad industry.

The second major dispute of this period was the "Diesel Locomotive Case" of 1943. In this controversy, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers, each acting independently, requested the rail carriers to adopt new methods of computing wages for the operating employees concerned, to eliminate certain existing wage differentials, and to grant each organization

the exclusive right to require and furnish additional employees in manning multiple-unit locomotives. This proposal was the basis for a sharp jurisdictional conflict between the two organizations. In opposition to these demands, the carriers contended that there was no justification for a new wage schedule constructed in the manner requested by the organizations, and that additional men were not required for the operation of all multiple-unit locomotives. They did not strongly object to the use of an additional man in through passenger service, but they were opposed to the proposal for freight, yard, and local passenger service.

The Emergency Board which considered this dispute formulated its recommendations very carefully. It found that the existing method of determining wages for the employees concerned should be retained, but a wage increase ranging from 5 to 10 cents per hour was suggested for those employees who operated certain types of locomotives weighing more than 350,000 pounds. The Board also held that on high-speed passenger trains two men should remain in the control cab of the locomotive at all times when the train was in motion, and that, if this requirement necessitated the employment of an additional man, he was to be drawn from the ranks of the Brotherhood of Locomotive Firemen and Enginemen. As these rulings served to preserve traditional practices, and, at the same time, eliminated certain inequities that had developed

in the wage schedules of some employees as new locomotives were introduced, it is believed that the Board demonstrated sound judgement.

If this Board is to be criticized it must be because of its failure to eliminate certain regional wage differentials. The Board held that it could see "no justification for a continuation of these differentials," but it believed that the differentials could not "appropriately be eliminated under the wage stabilization program" and did not recommend their discontinuance. The employee organizations were not satisfied with these recommendations and appealed the matter to the President who responded by requesting the carriers to renew negotiations with the organizations. The dispute was ultimately settled in accordance with the basic principles recommended by the Emergency Board, except that the slight regional wage differentials which had existed between the major operating territories were eliminated. The personal intervention of the President in this dispute appears to have been unwarranted as the controversy probably could have been settled through the appropriate channels of the National Mediation Board. However, the President's action in this case served to strengthen a precedent which led him to act as the sole arbitrator in a dispute which followed.

The two remaining important disputes which developed during this period began independently, but their final

settlements were so closely associated that they might almost be considered a single controversy. The dispute between the non-operating organizations and the carriers developed from demands for a minimum wage of 70 cents an hour, an increase in wages of 20 cents per hour, and a union shop agreement. The issues were submitted to an Emergency Board which ruled that a union shop agreement would violate the Railway Labor Act, but it suggested that the employees be given a wage increase of 8 cents per hour. This finding was made upon evidence that the employees concerned received substantially lower wages than comparable groups of employees in other industries.

One month later, the Director of Economic Stabilization belatedly ruled that this recommendation could not be applied because of changes in wage stabilization policy and a "Special Emergency Board" was appointed to reconsider the case. The employee organizations ignored the findings of the second Board and announced a nation-wide strike unless a more favorable settlement was achieved.

In the meantime, the operating organizations had requested a basic wage increase of 30 per cent. This issue was submitted to an Emergency Board which suggested a wage increase of 4-1/2 per cent, feeling that it was bound by the "Little Steel formula." One of the members of the Board wrote a vigorous dissent to this recommendation, for he felt that the

wage increase should have been larger and that the majority members were incorrect in their interpretation of the wage stabilization program.

Again, the employee organizations were not satisfied and announced a strike effective on the same date as that previously established by the non-operating groups. At this point, the President personally intervened in an effort to mediate the disputes, but this attempt failed and he suggested that he be authorized to arbitrate the issues. This proposal was accepted by the carriers and by two of the operating organizations, while the non-operating groups took the offer under consideration. As three of the operating brotherhoods still proposed to strike, the President seized the railroads and, at the same time, he announced his arbitration award. The President ruled that the employees should receive vacations of one week with pay, and a wage increase of 9 cents per hour--one cent more than the Stabilization Director had previously disapproved. This award was immediately approved by the Director.

The remaining operating organizations reached the same settlement following negotiations with the carriers, while the non-operating groups negotiated an agreement providing for a graduated wage increase ranging from 9 to 11 cents per hour. Since all of the major disputes had been settled, the President then returned the railroads to private management.

The difficulties which were encountered in the settlement of these controversies were not due to any inherent defects in the Railway Labor Act. Indeed, the Act and its agencies and procedures remained the same as before. However, the economic situation had changed sharply. Depression or relative depression had given way to wartime prosperity. Traffic on the railroads was extremely heavy and railroad earnings had increased sharply. Labor organizations had become able to point to the carriers' ability to pay in demanding increases in wages. The wartime emergency made it important that nothing should be allowed to interfere with the continuous operation of the railroads. The position of the railroad labor organizations was extremely powerful. And yet the program for wage stabilization interfered with the ability of the workers to secure the wage increases to which they felt entitled.

The demands of the labor organizations were far from completely unreasonable. The employees presented a strong case for a wage increase and the carriers did not maintain that an advance was unwarranted. The problem was to determine how large the increase was to be. Consistency with the wage stabilization program was one issue in this connection. However, it was also very important to reach compromise solutions which would insure the continuous operation of the railroads, and the emergency boards sometimes seemed to pay more

attention to this matter than to basic principles and issues. The employee organizations, on the other hand, recognized that the wage stabilization program was somewhat vacillatory, and previous experience had indicated that additional concessions might be obtained following intervention by the President. Accordingly, the employees pursued their objectives after the procedures of the Act had been exhausted, feeling with at least partial justification that additional concessions might be won. In short, the workers had less incentive than formerly to accept the best terms which could be obtained under the Act.

CHAPTER VII

THE NATIONAL WAGE AND RULE MOVEMENTS OF 1945 AND 1946

Following the return of the railroads to private management on January 18, 1944, no further disputes of national importance developed until December, 1944. Early in that month, the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen published a draft of thirty-seven proposed changes in the existing working rules which involved major revisions in the standard methods and procedures of railroad operation. These proposals were not formally submitted to the carriers at that time, but the carriers were aware of their publication. Within a short time, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America also announced that they were formulating modifications in the working rules governing their organizations. The carriers were fully informed of these events and they initiated a series of conferences between the representatives of the five operating organizations and the committees which represented the railroads in each of the three major territories in an effort to resolve this developing controversy.

These meetings, which were held in New York City from early March through June, were not successful, and on

July 24, 1945, the operating organizations formally served notice of their demands on the individual railroads throughout the country. The Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen demanded a general wage increase of 25 per cent, with a minimum increase of \$2.50 per day. In addition, these organizations desired a standardization of basic rates of pay throughout the country, certain revisions in mileage and overtime pay, limitations on train lengths, and extensive revision of various working rules. A total of 45 demands were submitted. The other three operating organizations representing the firemen, conductors, and switchmen, requested a wage increase of \$2.50 per day, as well as 46 changes in the existing working rules. In a counter proposal submitted to the five operating organizations on the same day, the carriers requested the revision of 29 working rules. There were a few attempts to negotiate these demands and counter demands on the individual properties, but as these conferences did not accomplish anything, the labor organizations requested that the dispute be negotiated at a national level.¹

In the meantime, the fifteen non-operating organizations which had cooperated in the national wage movement of

¹For a discussion of these early developments, see Railroad Wages and Labor Relations, 1900-1946, The Executive Committee of the Bureau of Information of the Eastern Railways (June, 1947), pp. 128-129.

1943 served notices on the individual railroads that they desired various changes in their working agreements. These notices, which were submitted during the summer and fall of 1945, were not uniform. Most of them requested wage increases, others proposed changes in the existing working rules and working conditions, while still others demanded both wage increases and a revision of working rules. The carriers, in turn, submitted proposals to most of the non-operating organizations for changes in the rules of their working agreements. This controversy was first negotiated by the individual railroads and the organizations concerned, but the parties agreed to conduct further negotiations on a national basis after early conferences proved unsuccessful. When national conferences began, the non-operating organizations agreed to convert their various proposals into a single demand for a wage increase of 30 cents per hour. In return, the carriers withdrew their proposed rule changes.²

During the latter part of November, 1945, both the operating and non-operating groups met jointly with the carriers in a series of national conferences. Since the parties were not able to effect a settlement, on December 13, 1945, the carriers requested the services of the National Mediation Board, while the non-operating employees, together with the organizations representing the firemen, conductors, and

²Ibid.

switchmen, submitted a similar request to the Mediation Board in respect to the wage issue. The Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen did not request the intervention of the Board.³

On January 4, 1946, the Mediation Board, represented by its Chairman, H. H. Schwartz, George A. Cook, and Frank P. Douglass, began mediation proceedings in Chicago. However, the Board was not successful in its mediatory efforts, and on January 19, arbitration was proposed. It has been previously noted that the non-operating organizations and the carriers had already withdrawn the rules issue from their dispute, and the Mediation Board, in proposing arbitration, suggested that the operating organizations and the carriers defer the rules issue and submit the wage question alone to arbitration. Thus, the Board attempted to persuade all of the parties to limit the controversy to the wage increases in question and to submit this issue to one or more boards of arbitrations.⁴

The Board's suggestion of arbitration was made in a letter to the various organizations which is quoted in part:⁵

³Ibid., p. 129.

⁴Twelfth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1946 (Washington: Government Printing Office, 1947), p. 2.

⁵Quoted by A. F. Whitney, Railroad Rules--Wage Movement in United States, 1944-45-46 (Cleveland: Brotherhood of Railroad Trainmen, 1946), p. 20.

Mediation conferences began on January 4, 1946, and since that date the National Mediation Board has used its best efforts to bring about an amicable settlement through mediation, but has been unsuccessful.

It is the view of the Board that the question of rules as referred to in the application filed by the Carriers' Conference Committee, should be deferred.

The Board has decided that it is not able through mediation conferences to dispose of the requests for wage increases.

Therefore, in accordance with Section 5, first, of the Railway Labor Act, the National Mediation Board now requests and urges that you enter into an agreement to submit the wage question to arbitration, as provided in Section 8 of the Act.

The fifteen non-operating organizations, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America, as well as the carriers, agreed to confine the dispute to the question of wage increases and to submit the issue to arbitration. However, in a letter to the National Mediation Board dated January 22, 1946, the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen refused to submit their demands to arbitration and insisted that the wage issue and the proposed changes in working rules were inseparable. This letter is quoted in part:⁶

This acknowledges receipt of your letter of January 19, 1946

In this letter you state:

"It is the view of the Board that the question of rules, as referred to in

⁶Ibid., p. 49.

the application filed by the carriers' Conference Committee, should be deferred."

It is our opinion that your Board has no jurisdiction to express or assume this position. The controversy as to rules now existing between the carriers and the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen is as much a part of the issue to be determined as the demand for a wage increase and your Board has no authority to reject or to assume a position by making a recommendation that we defer this issue. In taking this position it appears to us that you are supporting the position taken by the carriers from the beginning of this dispute and are acting as an advocate of the carriers, rather than the Mediation Board acting under the authority of the Railway Labor Act.

We, therefore, state that we will not accept your position, but herewith vigorously press our position heretofore stated in relation to the rules and, so far as we are concerned, these rules must be determined together with the issue of wages.

You further ask us:

"Therefore, in accordance with Section 5, first, of the Railway Labor Act, the National Mediation Board now requests and urges that you enter into an agreement to submit the wage question to arbitration, as provided in Section 8 of the Act."

We repeat that we will not suspend nor defer any part of our issue against the carriers. In relation to both questions, we are not in accord with your request to enter into arbitration with the carriers.

After refusing the Mediation Board's suggestion to arbitrate the controversy, these two operating organizations began the circulation of a strike ballot among their members on February 1, 1946. Records of the poll indicated that approximately 98.5 per cent of the membership favored a strike if the issues could not be resolved by other means, and the two organizations established a progressive strike date

effective March 11, to continue through March 14, 1946, at which time all employees who were members of these two organizations would be off the job.⁷

In the meantime, two arbitration boards had been selected to consider the demands submitted by the fifteen non-operating organizations and the three operating organizations that had accepted arbitration.

The Wage Dispute Between the Carriers and
Three of the Operating Organizations--
Arbitration Board No. 61

The Arbitration Board which decided the wage dispute between the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America and the carriers as represented by the Eastern, Western, and Southeastern Carriers' Conference Committees, was composed of Judge Richard F. Mitchell, who served as Chairman, C. J. Goff, assistant president, Brotherhood of Locomotive Firemen and Enginemen, and R. W. Brown, president, Reading Railroad Company. As the arbitrators who represented the parties to the dispute could not agree upon a neutral member, Judge Mitchell was designated to serve by the National Mediation Board and he was elected Chairman of the Board:⁸

⁷Report to the President by the Emergency Board Appointed March 8, 1946, Pursuant to Section 10 of the Railway Labor Act, April 18, 1946 (Washington: Government Printing Office, 1946), p. 5.

⁸Twelfth Annual Report of the National Mediation Board, p. 41.

The Board of Arbitration began hearings in Chicago, on February 18, and rendered its award on April 3, 1946. During the hearings, all parties were given adequate opportunity to present their respective positions and a record consisting of 3,660 pages plus many exhibits was compiled. The Arbitration Board, in rendering its award, found:⁹

With respect to the question submitted for arbitration, this Board finds from the evidence offered and the showing made that the Award should be and hereby is as follows:

A W A R D

The Board awards the sum of One Dollar and Twenty-eight Cents (1.28) per basic day as justified under the evidence and a uniform increase in that amount per basic day, applicable to all Employees parties hereto, shall be added to all existing rates of pay, in accordance with said Arbitration Agreement.

The wage increase granted under this Award shall become effective January 1, 1946, in accordance with the Arbitration Agreement.

Finding and Certification

This Board specifically finds and certifies that the Award herein rendered and the wage change thereby made is consistent with the standards now in effect established by or pursuant to law for the purpose of controlling inflationary tendencies, and is approvable in its entirety for the purpose of price increases.

Mr. C. J. Goff, the employee representative, dissented from the majority findings of the Board.

⁹ Transcript of the Proceedings of the Arbitration Board Appointed Under the Provisions of the Railway Labor Act, National Mediation Board Docket No. A-2215, Arb. 61 (Washington: Frank M. Williams & Co., 1946), p. 1583.

The Wage Dispute Between the Carriers and the
Non-Operating Labor Organizations--
Arbitration Board No. 62

The Arbitration Board which was formed to consider the dispute between the Employees' National Conference Committee representing the fifteen non-operating labor organizations, and the railroads of the nation represented by the Eastern, Western, and Southeastern Carriers' Conference Committees, consisted of six men. The employee members were Felix Knight, general president of the Brotherhood Railway Carmen of America, and E. E. Milliman, president of the Brotherhood of Maintenance of Way Employees. The carriers were represented by Ralph Budd, president of the Chicago, Burlington and Quincy Railroad Company, and J. Carter Fort, vice-president of the Association of American Railroads. Since these arbitrators were not able to agree upon the neutral members to complete the Board, the National Mediation Board appointed Judge Herbert B. Rudolph and Judge Ernest M. Tipton to serve as neutral arbitrators.¹⁰

This Arbitration Board met in Chicago and hearings began on February 18. The Board concluded its hearings and announced its findings on the same day that the award to the operating organizations was made, April 3, 1946. The awards were identical, granting an increase of 16 cents per hour

¹⁰Twelfth Annual Report of the National Mediation Board, p. 42.

effective January 1, 1946.¹¹ Again, the employees announced their dissatisfaction, but the organizations did not take definite action at that time.

In the meantime, the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen, which had refused to participate in the arbitration proceedings, gave no indication of cancelling the strike which had been called, effective March 11, 1946. Accordingly, the National Mediation Board notified the President that an interruption of interstate commerce was threatened, and the President appointed an Emergency Board, under Section 10 of the Railway Labor Act, to investigate and report on the dispute.¹² This Board was created on March 8, and was composed of Leif Erickson (Chairman), Frank M. Swacker, and Gordon S. Watkins. The Emergency Board convened in Chicago on March 12, and hearings were held through April 8.

The Wage and Rule Dispute Between the Carriers
and Two of the Operating Organizations--
Emergency Board No. 33

The Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen, during the hearings before the

¹¹Ibid.

¹²This dispute marked the first time since the creation of the National Railway Labor Panel that the labor organizations did not utilize its facilities in a major controversy.

Emergency Board, repeated their demands for an increase of 25 per cent in the basic wage rate, with a minimum increase of \$2.50 per day. In support of this proposal, the organizations maintained that engineers, yardmen, and trainmen had received only a very small wage increase during the previous twenty years, a total of 24 cents per hour or \$1.92 per day. This fact, it was contended, had resulted in railroad wages lagging behind those of workers in other industries, and had created a "grossly inequitable situation" which should be corrected immediately. The employees also argued that living costs had increased, that railroad employment was very hazardous, that the level of training and experience required of engineers and trainmen was high, and that the "productivity" of the employees had increased. All of these factors, it was maintained, justified a substantial increase in wages. In reference to the wage stabilization policies of the government, the employees pointed out that under the existing "cost-of-living formula" an increase in the basic wage rate of 33 per cent above the wage level existing on January 1, 1941, was permitted. This policy justified an increase of 18 per cent, and as "additional and foreseeable increases in the cost of living beyond the amount presently approved in the cost-of-living formula," together with existing "gross inequities" justified an additional increase, the employees contended that the Board should authorize the full 25 per cent increase

in wages being sought.¹³

In presenting their position to the Emergency Board opposing the wage proposals, the carriers relied principally upon their view that the volume of railroad traffic would decline during the post-war period, and that railroad revenues would decrease accordingly. It was maintained that the railroads were faced with increasingly severe competition, and that this fact, together with a decline in the movement of troops and war materials, would place the railroads in a serious financial situation if a substantial wage increase was granted. The carriers also attacked the exhibits submitted by the employees which compared wage levels in the railroad industry with those in other industries. The carriers argued that the actual "take-home" pay of railroad workers was much higher than that indicated by employee testimony, and that an increase of about 10 cents per hour in the basic rate would be sufficient to remove any existing inequities. Finally, the carriers contended that the railroad industry should be regarded as an entity in making any wage adjustments, and that the 16 cent increase awarded by the two arbitration boards to the other operating organizations and to the non-operating groups should be regarded as a maximum limit not to be exceeded. To exceed this wage increase, it was declared, would be to

¹³Report to the President by the Emergency Board Appointed March 8, 1946, pp. 5-6.

invite unrest and discontent in the railroad industry.¹⁴

It will be remembered that the two operating organizations in this dispute submitted 44 proposed rule changes to the carriers in conjunction with their wage demands, and that the railroads made a counter proposal requesting that 29 working rules be revised. In connection with these proposed changes in the working rules, the Emergency Board made the following statement:¹⁵

The brotherhoods presented 44 proposals concerning working rules affecting the train and engine service agreements, for uniform application nation-wide, and proposals for complete new agreements covering dining car stewards and yardmasters. The carriers presented proposals for 29 rule changes affecting the train and engine service groups.

Generally, the proposals of each side are extreme. Some of those of the organizations would result in seven days' pay for one day's work; and indeed, by combinations of proposals, even multiples of that.

Some of those of the carriers would abolish with one stroke the rights of the organizations acquired after a half a century of effort through negotiation, arbitration, commissions, emergency boards, et cetera.

Doubtless, both sides made their proposals for-reaching [sic] for trading purposes.

Many of the proposals have some basic merit, but in their presentation to us, each side contented itself in the main with asserting its demands and pointing out the extremity of the proposals of the other side without either offering us any substantial assistance in the way of definitive suggestions of rules which would meet reasonably the merited demands

¹⁴ Ibid., pp. 6-8.

¹⁵ Ibid., p. 11. The rule proposals of the organizations are quoted in full on pages 28-47 of this document, and the carriers counter proposals are found on pages 47-58.

of the other side. The volume of material offered in support of the respective contentions concerning these proposed rules changes consists of many thousands of printed pages of historical and technical setting of the rules. Merely to read all this material would take weeks, and to digest it and reach conclusions upon it would take months. And then a reasonable result could be reached only by cooperative assistance from the parties. The subject-matter is extremely technical and a slight inadvertence might afford grounds for claims running into the hundreds of thousands of dollars or the destruction of vital rights of employees.

The Emergency Board submitted its findings to the President on April 18, 1946. Regarding the wage proposal of the two operating organizations, the Board made the following statement and recommendations:¹⁶

At the outset of consideration of this proposal, we are confronted with the situation that there were sitting concurrently two Boards of Arbitration, constituted under the Railway Labor Act, considering similar demands: One by the fifteen unions representing the non-operating employees, and the other by the other three operating brotherhoods, pursuant to agreement of the parties. On April 3rd these boards rendered their decisions, in each case awarding an increase of 16 cents per hour in the basic hourly rates.

This, it is asserted, and we believe correctly, fixes a pattern binding upon this Board, and we accordingly recommend a like increase--namely, \$1.28 per basic day or 16 cents per hour, the same to be applicable to all arbitraries, differentials, miscellaneous rates, special allowances, and daily and monthly guaranties, retroactive to January 1, 1946, and applicable to all carriers involved in these proceedings.

The Board was very hesitant in attempting to make any recommendations concerning the rule changes requested by the

¹⁶Ibid., p. 8.

two brotherhoods or the counter proposal of the carriers. The Emergency Board stated in this connection:¹⁷

Save for a comparatively few definite recommendations hereinafter made concerning particular rules, we can, in the limited time at our disposal, do nothing other than to remand the rules controversy to the parties for further negotiations. It was apparent in the course of the hearing that no very serious effort has been made by the parties to negotiate with respect to the demands, as it was evident that there was uncertainty on both sides as to the actual scope or operation of their respective demands.

Accordingly, the Board made twenty very general recommendations in reference to the revision of certain working rules, but no specific findings were made and it may be stated that for all practical purposes the rules controversy was returned to the parties for further negotiation and settlement.¹⁸

The Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen both denounced the findings of the Emergency Board and stated that they would not accept the wage increase recommended. A strike was announced to become effective May 18, 1946, at 4:00 P. M., unless a satisfactory settlement of the controversy could be achieved prior to the strike date. However, negotiations between the two brotherhoods and the Carriers' Conference Committee were continued through May 2, 1946, at which time they were discontinued because the

¹⁷Ibid., p. 12.

¹⁸Ibid., pp. 12-26.

representatives of the organizations refused to attend further conferences, maintaining that the carriers were not attempting to negotiate the issues involved in the dispute.¹⁹

In the meantime, the eighteen labor organizations that had submitted their demands to boards of arbitration presented new wage requests to the carriers. Contending that the wage increase of 16 cents an hour awarded by the arbitration board was "grossly inadequate," the fifteen non-operating organizations, on April 15, 1946, formally demanded an additional wage increase of 14 cents per hour. On May 3, 1946, following the example of the non-operating brotherhoods, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America served notice on the carriers for an additional increase of \$1.20 per day. Thus, the entire wage movement on the part of all twenty of the railroad labor organizations became the subject of renewed negotiations.²⁰

Intervention by the President of the United States

On May 13, 1946, following the breakdown of negotiations between the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen and the carriers, President

¹⁹See A. F. Whitney, op. cit., pp. 63-74.

²⁰Railroad Wages and Labor Relations, 1900-1946, p.

Truman personally intervened in the dispute. His first act was to call a conference with A. Johnston, Grand Chief Engineer, Brotherhood of Locomotive Engineers, and A. F. Whitney, President, Brotherhood of Railroad Trainmen. This conference, held at the White House, on May 14, 1946, was attended by Secretary of Labor Lewis Schwellenbach, Dr. John Steelman, Mr. H. H. Schwartz, Chairman of the National Mediation Board, and Mr. John Snyder, the Director of Stabilization. During this meeting, the President requested the two organizations to join with the other operating unions in negotiations with the carriers and to abandon their rules program for the moment. It was suggested that a wage increase of about 18-1/2 cents an hour might be obtained by the organizations if this proposal was accepted. The two brotherhoods absolutely refused to join the other organizations in negotiations with the carriers, maintaining that the other three operating brotherhoods had "double-crossed" them by abandoning their proposed rule changes. However, at the insistence of the President, both Mr. Whitney and Mr. Johnston agreed to resume conferences with the carriers, but they did not modify their position in reference to the working rule changes proposed.²¹

Following the agreement with the President to resume negotiations with the carriers, the representatives of the

²¹A. F. Whitney, op. cit., pp. 75-77.

two brotherhoods met with carrier representatives on May 14, 15, 16, and 17, without either party modifying its position. At the same time, the carriers were holding separate meetings with the other three operating organizations and the fifteen non-operating unions. On May 17, the President called another conference with the chief executive of the two brotherhoods, and on finding that negotiations with the carriers had reached an impasse, the President issued an Executive Order taking possession of the railroads and placing them under control of the Office of Defense Transportation for operation.²² On the following day, May 18, 1946, the date set for the strike by the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen, the President, through Dr. John Steelman, personally requested the two organizations to postpone the called strike for five days, expressing the belief that the railroads were ready to make some concessions in their position.²³ The postponement was agreed to by the two organizations, but since the agreement was reached at 3:40 P. M., prior to the scheduled strike at 4:00 P. M., there were sporadic walk-outs throughout the country as the train and engine service employees did not receive official notification of the postponement until after 4:00 P. M.

The strike was postponed until 4:00 P. M., May 23,

²²Ibid., pp. 79-80.

²³Ibid., pp. 85-91.

and the representatives of the two brotherhoods returned to Washington, D. C., on May 19, to renew negotiations with carrier representatives at the request of the President. However, instead of negotiating directly with the railroads, conferences were held with the President's staff, with the President acting as mediator between the parties. On May 22, the employee representatives met with the President and, during the conference, the President again proposed that the employees accept a wage increase of 18-1/2 cents per hour and abandon their proposed rule changes.²⁴ This offer was refused by the brotherhoods in a letter delivered to the President during the morning of May 23, and at 4:00 P. M. that afternoon, the employees began their nation-wide strike.²⁵ Although the employees represented by the fifteen non-operating organizations and the other three operating brotherhoods did not officially join in the strike, many individual employees joined the striking engineers and trainmen. The effect of the strike was described by the National Mediation Board as "immediate, paralyzing and Nation-wide."

On the evening of the following day, May 24, the President, in a national broadcast, requested the strikers to return to their work by 4:00 P. M. the next day, and

²⁴Ibid., p. 101.

²⁵Ibid., pp. 103-105.

announced that he would appear before a joint session of Congress on May 26 to deliver an address on the emergency. The President, among other comments, made the following statement to the striking workers:²⁶

The railroads must resume operation. In view of the extraordinary emergency which exists, as President of the United States, I call upon the men who are now out on strike to return to their jobs and to operate our railroads. To each man now out on strike I say that duty to your country goes beyond any desire for personal gain.

If sufficient workers to operate the trains have not returned by 4:00 P. M. tomorrow, as head of your Government I have no alternative but to operate the trains by using every means within my power. I shall call upon the Army to assist the Office of Defense Transportation in operating the trains, and I shall ask our armed forces to furnish protection to every man who heeds the call of his country in this hour of need.

On the morning of May 25, the fifteen non-operating organizations and the three operating brotherhoods representing the firemen, conductors, and switchmen, reached an agreement with the carriers. This settlement provided for the acceptance of the 16 cent wage increase awarded by the two arbitration boards, together with an additional 2-1/2 cents per hour, to become effective May 22, 1946. These agreements did not place any limitations on rule changes that might later be proposed and negotiated by the parties. Shortly before 4:00 P. M., the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen agreed on a settlement with

²⁶Ibid., p. 131.

the carriers and the strike was cancelled just 48 hours after it began. This agreement provided for a wage increase of 18-1/2 cents per hour, the same increase obtained by the other 18 organizations, and the parties agreed upon a moratorium on rule changes for a period of one year. However, the engineers and the trainmen were not satisfied with the settlement and denounced it as a "duress agreement . . . signed under the threat of the President of the United States . . . at bayonet's point."²⁷

That afternoon, the President, in an address to Congress, discussed the railroad crisis and requested that body to enact special legislation granting the President additional powers to cope with such emergencies. During his speech, the President announced that he had received word that the rail strike had been cancelled, and on the following day, since all of the major wage disputes had been settled, the President returned the railroads to private management.²⁸

Summary

Although the three important disputes during 1945 and 1946 began independently and were considered separately by different boards established under the Railway Labor Act,

²⁷Ibid., p. 116. The text of the agreement is found on pages 117-118 of this publication.

²⁸The legislation proposed by the President was never enacted by Congress.

their final settlements were so closely associated that they might almost be considered a single controversy.

Early in 1945, the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen submitted an extensive list of wage and rule demands to the nation's carriers. These demands were followed by similar requests from the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America. In turn, the railroads requested the five operating organizations to consider the revision of 29 working rules. At the same time, the fifteen non-operating organizations served notice that they desired various changes in their working agreements, and the carriers submitted certain counter proposals to these organizations.

These demands and counter demands were first negotiated on the individual carrier properties, but, since these efforts were futile, the carriers and all of the labor organizations except the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen requested the intervention of the National Mediation Board. Under the auspices of the Board, the carriers, the non-operating organizations, and three of the five operating groups were persuaded to defer the working rules issue and submit the wage question to arbitration. However, the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen refused arbitration,

maintaining that the rules and wage issues were inseparable and that the points in question could not be arbitrated.

Accordingly, two boards of arbitration were selected to consider the issues between the three operating groups, the non-operating employees, and the carriers. These arbitration boards made identical awards which were not entirely satisfactory to the labor organizations. During this time, the engineers and trainmen had continued their plans for a national strike, and an emergency board was appointed to consider this dispute. This board found that the wages of these two organizations should be increased by the same amount as had been awarded the other labor groups, and in relation to the rules issue, it was held that the demands of both parties were excessive, that neither party had made any effort to aid the board in reaching reasonable conclusions, and that the parties should settle this issue by direct negotiations.

As the two operating organizations refused to accept these recommendations, the parties renewed their negotiations. Since it appeared that these meetings might result in additional concessions to the employees, those groups which had agreed to arbitration presented new wage demands to the carriers. Since the procedures of the Railway Labor Act had been exhausted and the entire controversy had been reopened, the President saw fit to resort to personal intervention at this point.

President Truman's first act was to request the engineers and trainmen to join the other operating brotherhoods in negotiations with the carriers. It was also suggested that the rules issue be abandoned and that if this were done, an increase of about 18-1/2 cents per hour might be obtained by the organizations. The two brotherhoods absolutely refused to consider these suggestions, and, since a strike appeared imminent, the President seized the railroads.

However, the President's action did not prevent the strike from taking place as scheduled, and he was forced to make a personal appeal to the workers to return to their jobs. At the same time, the President, before a joint session of Congress, requested additional executive powers to cope with such emergencies. Two days after the strike began, the non-operating organizations and the firemen, conductors, and switchmen reached an agreement with the carriers providing for a wage increase of 18-1/2 cents per hour. That afternoon the engineers and trainmen accepted the same settlement and the strike was cancelled.

The difficulties experienced in the settlement of disputes during this period were much the same as those of 1942-1943. The findings of the boards of arbitration and the emergency board which served in these disputes merit general support. All parties agreed that a wage increase was justified and, when the awards were made by the boards of arbitration,

they were necessarily identical. These awards established a precedent which the emergency board could not ignore. The emergency board must also be supported in its findings on the rules issues. The demands of both parties were extreme and the board found it impossible to develop satisfactory compromises. The only alternative was to remand the issue to the parties for further negotiations.

With regard to the wage issue it must be said that, under the generally favorable economic situation which continued to exist, the railroad labor organizations were unwilling to consider as final the awards and recommendations made under the procedures of the Railway Labor Act. These awards were simply considered as a new basis upon which to begin negotiations, in clear violation of the spirit and intent of the Railway Labor Act. Again, there was little doubt that additional concessions could be obtained following personal intervention of the President. In his first conference the organizations were assured that an additional wage increase was possible if the rules issue was abandoned. Finally, these disputes were marked by the determination of the engineers and trainmen to win better settlements than those obtained by the other labor groups. If this had been possible, it would have greatly enhanced the power and prestige of these two organizations.

CHAPTER VIII

THE NATIONAL WAGE AND RULE MOVEMENTS OF 1947 AND 1948

Early in March, 1947, the non-operating unions, representing seventeen groups of employees, announced that, due to the "rising cost of living," a reduction in the number of hours worked per week, and the fact that the living standards of the employees had not been "improved substantially in the past ten years," new wage demands were being formulated for submission to the carriers. At the same time, the five operating organizations announced that they planned to renew their efforts to obtain extensive changes in their working rules as soon as the one year moratorium on rule changes agreed upon in the wage settlement of May, 1946, had expired.¹

The non-operating organizations met together in Chicago, on March 14, 1947, and formed a cooperative committee to submit their wage demands to the nation's railroads.² On March 25, 1947, this committee formally submitted its demands

¹Traffic World, Vol. 79 (March 15, 1947), p. 790.

²The following classes or crafts were represented in this wage movement; telegraphers, railway clerks, maintenance-of-way men, signalmen, dispatchers, dining car employees, marine engineers, longshoremen, mates and pilots, yardmasters, carmen, machinists, blacksmiths, sheet metal workers, electricians, boilermakers, and oilers.

to the carriers, requesting a wage increase of 20 cents an hour for all employees represented, to become effective April 25.³

Negotiations began on the individual properties, but as these conferences followed the usual pattern of failure, the Employees' National Conference Committee requested the carriers to create a committee which would have the authority to represent all of the carriers and to continue conferences on a national basis. National bargaining on the wage issue began in Chicago, on June 17, 1947, with the employees being represented by their cooperative committee and the railroads by three regional committees, one from each major territory. These conferences continued until June 26, 1947, at which time both parties to the controversy requested the intervention of the National Mediation Board, as there appeared to be little hope of settling the dispute through direct negotiations. The carriers maintained, during these meetings, that a new wage increase could not be considered at that time, while the employees contended that rail revenues were ample to support a wage increase and that the existing wage level in the railroad industry justified an increase in pay.⁴

In response to the request of the parties, the National

³Traffic World, Vol. 79 (March 29, 1947), p. 1018.

⁴Traffic World, Vol. 80 (July 5, 1947), p. 55.

Mediation Board, represented by its chairman, Frank P. Douglas, and Francis A. O'Neill, Jr., began mediation proceedings on July 8, 1947, in Chicago. The Board unsuccessfully continued its efforts to reach a settlement by mediation through July 19, 1947, and finally proposed arbitration.⁵

Both sides agreed to submit the controversy to arbitration and a six-man board was selected. The employees designated George M. Harrison, president, Brotherhood of Railway and Steamship Clerks, and George Wright, vice-president, International Brotherhood of Firemen and Oilers, as their representatives, and the carriers selected J. Carter Fort, vice-president, Association of American Railroads, and H. A. Scandrett, retired president of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. These party members selected Dr. William M. Leiserson and Dr. Robert D. Calkins to serve as the neutral members of the board.⁶

The Decision of Arbitration Board
No. 91 in the Dispute of the Non-
Operating Organizations

The Arbitration Board began public hearings in Chicago,

⁵Traffic World, Vol. 80 (July 26, 1947), p. 282.

⁶Fourteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1948 (Washington: Government Printing Office, 1948), p. 38.

on August 4, 1947, which were continued through August 28.⁷ The Board, under the arbitration agreement, was given a single question to decide:⁸

Request of the employees to change and increase all existing rates of pay by the addition thereto of twenty (20) cents per hour, effective April 25, 1947, and the further request of employees represented by the American Train Dispatchers Association and the Railroad Yardmasters of America that the amount of the hourly increase be multiplied by 240 hours to produce the amount of the monthly increase.

However, the Board was given authority by the provisions of the arbitration agreement to modify the wage increase requested, if it so decided.⁹

If the Board finds that the requests of the employees . . . should neither be granted nor denied in their entirety, the Board may award such amount of increase within the limits of the request and fix such effective date thereof as it finds under the evidence to be justified, but any increase awarded shall be a uniform increase in cents per hours, with the same effective date.

The employees, in supporting their position before the Arbitration Board, contended that living costs were increasing rapidly and that the wages of railway employees were not advancing as rapidly as wages in other industries. The argument is best summarized by the following statement found

⁷Transcript of Proceedings of the National Mediation Arbitration Board, Case A-2595, Arb. 91 (Washington: Ward & Paul, Official Reporters, 1947).

⁸Ibid., p. 988.

⁹Ibid.

in the introductory brief submitted by the employees:¹⁰

The employees' case is predicated primarily upon the fact that the portion of the national production of wealth they receive has been unfairly and grossly declining. The work of the railroad employees is an integral part of the productive process of almost every American product. But others engaged in other phases of production have for some time and almost without exception been receiving increases in earnings much larger than that of the railroad workers. This unbalance in the distribution of the national product is both unfair to the railroad worker and dangerous to the economic health and welfare of the country. The increase necessary to restore a proper balance is far in excess of the twenty cents per hour here in issue

There has been an accumulation of inequities in the rates of pay of the non-operating employees. Today there is a gross and shocking disparity in the progress made by these men compared to the progress made by workers in other industry. Just to restore the railroad worker to parity with other workers as of the end of 1946 on this basis alone requires in justice an increase of at least 25 cents per hour. To that must be added the increases obtained and being obtained in other industries since 1946. Most of these 1947 increases have amounted to about 15 cents per hour, with some of them considerably in excess of that amount.

Thus on the basis of the existing inter-industry inequities in the development of existing wage rates an increase of not less than 40 cents per hour is fully justified by the evidence, but since the arbitration is limited to 20 cents per hour this Board can grant only that amount. Any smaller amount would simply ignore the evidence. In recent years Emergency Boards and Arbitration Boards have been prevented from correcting these inequities by wage-stabilization legislation and other regulation. There is no longer any artificial limitation on the correction of this situation.

In further support of their position, the employees

¹⁰Ibid., pp. 1141-1142. For the complete brief, see pages 1135-1205.

maintained that the average worker had "greatly increased" his "productivity" and that even after making an "ample allowance" for the contribution of capital to this increased production, the worker was not receiving his share of the greater production being achieved. Finally, it was argued that in order to insure "a sound national economy," the wages of railway workers should be increased in order to obtain a high level of consumption. If wages, or the "means of consumption," were not increased, it was contended that over-production would inevitably produce economic stagnation and waste of the national wealth.

The carriers, in rebuttal to the arguments of the employees, based their position on three central arguments. In essence, the carriers maintained that an additional wage increase for the employees was not justified as their compensation exceeded "the general level of compensation" in other industries. It was contended that a wage increase could not be justified on the basis of "wage patterns," "living costs," "employee productivity," or the "theory of purchasing power." It was further argued that wages could not be increased without "serious injury to the public interest including the interest of both the employees and the railroads."¹¹

On September 2, 1947, the Arbitration Board rendered

¹¹Ibid., pp. 1013-1131.

its award which was to become effective September 1, 1947. The employees were granted an increase in wages of 15-1/2 cents per hour, this amount to be multiplied by 240 hours per month to determine the monthly wage increase of train dispatchers and yardmasters. The members of the Arbitration Board were not unanimous in their recommendations. The two carrier representatives filed dissents to the majority findings of the Board.

During the period in which the dispute between the carriers and the non-operating employees was being brought to a conclusion by a board of arbitration, a dispute between the operating employees and the carriers was rapidly developing. It has been previously stated that, as early as March, 1947, the operating organizations were planning to resume their efforts to obtain certain revisions in the rules of their working agreements. Actually, the 1947-1948 wage and rule movement of the operating employees represented a continuation of the rules movement which began in July, 1945. It will be remembered that at that time the employees demanded 44 rule revisions, but in the settlement of the dispute reached during May, 1946, the operating employees who had been active in pressing for rule revisions agreed to a moratorium on rule changes for a period of one year. Accordingly, when the year had expired, the rules issue again became the basis for a dispute between the carriers and the operating organizations.

The 1947-1948 Wage and Rule Movement
of the Operating Employees

On June 20, 1947, all five of the operating organizations, acting as a single group, formally served identical notices on the nation's railroads, requesting 44 changes in the rules of their working agreements. On the same day, the carriers served notice on the employees that they desired the revision of 25 working rules. National conferences were arranged by the parties to begin on October 7, 1947, to discuss these demands and counter demands, but in the meantime the arbitration award of 15-1/2 cents per hour to the non-operating employees was announced on September 2, 1947. Therefore, the five operating organizations, on September 30, 1947, amended their proposed rule changes by making an additional demand on the carriers for a wage increase of "thirty percent with a minimum money increase of \$3.00 on the basic day." The requested increase in wages was to become effective November 1, 1947.

Conferences on the rules issue began as scheduled on October 7, 1947, and continued through October 23. During these negotiations the employees agreed to withdraw 16 of their proposed rule changes, and in turn, the carriers withdrew 9 of their proposed revisions. New conferences were held, beginning on October 31, 1947, and continuing through November 13, in which both the rules issue and the wage demands were the subject of negotiations. On November 13, the five

operating organizations split into two groups. The Order of Railway Conductors and the Brotherhood of Railroad Trainmen began negotiations independently of the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America.¹² On the following day, November 14, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen reached an agreement with the carriers. Under this settlement, the two organizations were granted a wage increase of 15-1/2 cents an hour, following the pattern established by the arbitration board in the wage dispute of the non-operating employees. The rules controversy was resolved by both parties agreeing to withdraw certain proposed changes and by agreeing to continue negotiations on the remaining rules. A final agreement disposing of all of the issues in the rules dispute was reached on December 12, 1947.¹³

From November 13 through November 19, negotiations were continued by the remaining three operating organizations and the carriers, but a settlement could not be obtained and

¹²This is in contrast to the rules movement of 1945-1946 in which the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen broke away from the other three operating organizations.

¹³Report to the President by the Emergency Board Created January 27, 1948, Pursuant to Section 10 of the Railway Labor Act, March 27, 1948 (Washington: Government Printing Office, 1948), pp. 2-3.

the carriers requested the National Mediation Board to intervene in the controversy. Direct negotiations were suspended when the three organizations refused to accept an offer of the carriers to settle the dispute on the basis agreed to by the Brotherhood of Railroad Trainmen and the Order of Railway Conductors. At the same time, the three brotherhoods announced that they were distributing a strike ballot among their members.¹⁴

The National Mediation Board, represented by its chairman, F. P. Douglass, F. A. O'Neill, Jr., T. E. Bickers, and J. W. Walsh, began mediation proceedings in Chicago, on November 24. The Board met alternately with union and carrier representatives until January 16, 1948, in an attempt to resolve the controversy, but all efforts of the Mediation Board failed. The Chairman of the Board then proposed to the parties that the dispute be submitted to arbitration, but the employee representatives refused to consider this proposal even though the carriers were willing to arbitrate the issues. After refusing arbitration, the three brotherhoods announced that 98 per cent of the employees that they represented had signified their willingness to strike if the dispute could not be settled by other means, and a strike date was set for 6:00 A. M., February 1, 1948.¹⁵

¹⁴Traffic World, Vol. 80 (November 22, 1947), p. 1511.

¹⁵Traffic World, Vol. 81 (January 24, 1948), p. 262.

The National Mediation Board then notified the President that the dispute threatened to "interrupt interstate commerce to a degree such as to deprive the country of essential transportation service," and the President, acting on this notification, created an emergency board on January 27, 1948, to investigate and submit a report on the controversy.¹⁶ The Emergency Board, consisting of W. M. Leiserson (Chairman), G. E. Busnell, and W. W. Wirtz, began public hearings in Chicago, on February 2, 1948, and hearings were continued through March 10. It became evident during the course of the proceedings that the Board would not complete the hearings and submit a report within the thirty-day period required by law, and the submission date of the report was extended to March 27, with the approval of the President.¹⁷ The strike, which had been announced by the three organizations to become effective February 1, was postponed for an indefinite period on appointment of the Emergency Board by the President.

On January 12, 1948, the employees had revised their original demands as submitted to the carriers. Therefore, the Emergency Board was requested to consider a demand for a wage increase of 30 per cent with a minimum increase of \$3.00 per day, together with the revision of 23 working rules instead

¹⁶Traffic World, Vol. 81 (January 31, 1948), p. 337.

¹⁷Report to the President by the Emergency Board Created January 27, 1948, p. 1.

of the revision of 44 rules as originally demanded.¹⁸ The carriers, in turn, requested the consideration of 13 rule revisions.¹⁹

The employee organizations, in support of their demand for a wage increase before the Board, summarized their position as follows:²⁰

The cost of living since June 1946 has gone up 26.6 percent Our real wages have actually decreased while the wages of other employees in the railroad industry have been substantially increased and for workers in other industries have increased 35 percent since 1946

This is 1948 and we are entitled not only to the 15-1/2 cents pattern of 1947 but to the 1948 pattern which is being paid to group after group--and large groups, too--of organized labor We have failed to obtain any share of the increase in productivity of the past ten years

Substantial segments, especially in the lower-paid brackets cannot presently, with reasonable hours of labor earn an amount adequate for a reasonable American standard of living, as measured by recognized authorities, and are compelled to work 7 days a week and 365 and even 400 days per year The hazard of their work has increased 88 percent in recent years

The carriers, in opposing the wage demand made by the employee groups, contended that any wage increase granted by the Emergency Board should conform to the award of 15-1/2 cents per hour made to the non-operating groups by an arbitration board in September, 1947, and to the more recent

¹⁸Ibid., pp. 66-71, Appendix C.

¹⁹Ibid., pp. 72-77, Appendix D.

²⁰Ibid., pp. 4-5.

agreement reached by the carriers with the conductors and trainmen. It was maintained that the wage increase already accepted by "90 percent of the railroad employees" established a "pattern" for the industry, and that regardless of the criterion used to determine a wage increase, an increase in wages of more than 15-1/2 cents per hour could not be justified. Finally, the carriers argued that government policy and the need for "halting inflation" required that the Emergency Board limit its recommendations to a maximum increase of 15-1/2 cents.²¹

In rendering its findings on the wage issue, the Board made the following statement:²²

In 1947, 17 nonoperating organizations and the carriers submitted the employees' demand for a 20 cents per hour wage increase to arbitration under a stipulation confining the award to a uniform increase in cents per hour. That Board granted a wage increase of 15-1/2 cents which had the effect, among others, of restoring the employees in these groups to the position they occupied in the years between 1936 and 1940 with respect to wages in other industries. The agreement entered into later between the ORC, the BRT, and the participating carriers followed the pattern set by the nonoperating arbitration award.

In this manner about 90 percent of those employed in the railroad industry had their earnings adjusted in 1947 on a cents per hour basis. No percentage wage increases have been granted to railroad employees since prior to 1937.

The right of each organization to bargain separately or in groups is fully recognized by this

²¹Ibid., p. 5.

²²Ibid., p. 6.

Board. Nevertheless the wage structure applicable to the employees represented by the five operating organizations must be considered as well as the traditional differentials between them and the nonoperating employees. Nor must it be forgotten that the present wage controversy is but the remainder of the 1947 joint wage movement by the five operating organizations.

At the hearing the organizations here concerned also stressed the fact that these proceedings are being carried on in 1948, and that the cost of living has risen substantially since September 1947 when the employees' wage demands were submitted. This Board, however, cannot undertake consideration of anything like a third round of wage increases. The 1947 joint wage movement represents the second round of wage demands since the end of the war, and we must confine ourselves to considering the request of the relatively small number of employees here involved as the culmination of 1947 joint wage movement.

We, therefore, deem it essential, under these circumstances, to adhere to the 15-1/2 cents per hour pattern.

Accordingly, the Emergency Board made the following recommendation in relation to the wage issue:²³

That the basic rates of pay of the employees here involved be increased in the amount of 15-1/2 cents per hour or \$1.24 per day effective as of November 1, 1947. That daily earnings minima be increased \$1.24; existing money differentials above existing standard daily rates be maintained; and all arbitraries, miscellaneous rates, or special allowances provided in agreements or schedules be increased in proportion to the daily increase of \$1.24.

This dispute marks the first attempt of any Emergency Board to consider in detail the rule revisions proposed by the parties and to formulate specific recommendations in relation

²³ibid., pp. 6-7.

to these proposals. The rule revisions suggested by the employees were the object of a great deal of testimony from both the carriers and the operating organizations, but the proposed revisions of the carriers, with one exception, would not be considered by the employee representatives. They refused to present any evidence, either directly or by rebuttal, in connection with the carriers' proposals. In reference to this matter, the following statement was made:²⁴

The Organizations (BLE, BLE & E and SUNA) cannot seriously consider Carrier proposals to deprive the employees of advantageous and hard won conditions which in truth underlie and form the basis for the further and modest advances now under consideration

They, by their proposals, would ask this Board to recommend rules which in principle would declare the unrighteousness of beneficial rules enjoyed by classes of employees not granted opportunity to be heard before this Board in their own defense The problem of the railroads cannot be solved through turning the clock backward, or through forcing their employees into defensive refusal to work under worsened conditions.

However, the Emergency Board proceeded to make recommendations on the rules as proposed by both the carriers and the employees, feeling that there was no other alternative and that the position taken by the employee organizations was "unwarranted and unfortunate." In connection with the 23 rule changes proposed by the employees, the Board recommended

²⁴Ibid., p. 38.

that 12 be withdrawn by the organizations. It made specific findings and recommendations in the remaining 11 suggested revisions.²⁵ The carriers proposed 13 rule revisions; on these, the Board ruled that it was without jurisdiction in one case, that 3 proposals should be remanded to the parties for further negotiations, and that 7 of the proposed rules should be withdrawn. The Board made specific recommendations in reference to 2 of the carrier proposals.²⁶

However, the Emergency Board was gravely concerned with the attitude of the parties on the rules issue and some of the recommendations that it made. This is well illustrated by the following statement made in connection with the so-called conversion rule:²⁷

The Board accepts responsibility for whatever fault may be properly attributed to it for any inadequacy in this or of any other of its recommendations. We take this occasion, however, to point out to the parties a danger which is only highlighted in this particular instance and which is in fact manifest in many others of the proposals submitted to us. It is a danger which threatens the very foundations of the collective bargaining relationship . . . in this industry

The Board was not asked, on this Conversion rule issue, to resolve a question of principle.

²⁵Ibid., pp. 7-38.

²⁶Ibid., pp. 38-56.

²⁷Ibid., p. 56. The conversion rule provides that when a through passenger or freight operating crew performs switching duties or other duties other than those regularly assigned, that the wage rate of the through crew shall be converted to the wage rate for a local freight crew.

It was made, instead, the target for a barrage of conflicting arguments about a lot of little details. We were asked to find the answers to all these quibbles in a mass of evidence and testimony which covered 230 pages of exhibits and 150 pages in the Record. This was to be done, within a 2-week period, as one little piece of a job which included the disposition of 36 other issues on the basis of well over 12,000 pages of testimony and exhibits.

To use the Emergency Board procedure in this fashion seems to us to defeat its purpose It is a mistake to call upon a Board such as this, as part of an "emergency" procedure, to spend its time trying to unravel a tangle of wrapping string. That these parties were not able to accomplish, by negotiation, even this little kitchen job is cause for real concern. In our judgement this kind of failure has, so far as collective bargaining is concerned, malignant potentialities.

The Emergency Board submitted its findings and recommendations to the President on March 27, 1948. Following publication of the report, the parties renewed direct negotiations on April 15, and conferences were continued until their suspension on April 27. As a condition of continued negotiations, the employee representatives demanded that the carriers withdraw their proposed rule changes, while the railroad representatives maintained that any settlement reached should be within the broad outline of the Emergency Board's report. On April 29, two of the three organizations, the Brotherhood of Locomotive Firemen and Enginemen and the Switchmen's Union of North America, announced that they would strike on May 11, 1948, unless an acceptable settlement to the controversy could be achieved in the meantime. The National Mediation Board resumed meetings with the parties to the

dispute on the same day that the strike was announced. The Brotherhood of Locomotive Engineers did not take any definite action at that time, stating that they preferred to wait and see what could be accomplished by the National Mediation Board.²⁸

On May 4, 1948, the Board announced that it had discontinued efforts to settle the dispute by mediation as "we haven't been able to get the parties to budge from the positions they held when direct negotiations were broken off."²⁹ This fact was reported to the President, and on May 6, John R. Steelman, acting as the President's personal representative, requested the chief executives of the three organizations to meet with him in a conference at the White House on May 7.

Following the initial conference with union representatives, Mr. Steelman held separate conferences with both parties to the dispute. However, these conferences were not successful and on May 10, the President, by Executive Order, assumed "possession, control, and operation" of the nation's railway system, placing the railroads under control of the Secretary of the Army for administrative purposes.³⁰ At the same time, the government obtained a temporary restraining order in the

²⁸Traffic World, Vol. 81 (May 1, 1948), p. 1345.

²⁹Traffic World, Vol. 81 (May 8, 1948), p. 1463.

³⁰Traffic World, Vol. 81 (May 15, 1948), p. 1543.

Federal District Court of the District of Columbia prohibiting the three operating organizations from beginning the strike scheduled for 6:00 A. M., May 11. This temporary order was subsequently extended, and on July 1, 1948, Justice T. Alan Goldsborough issued a permanent injunction barring a strike by the three brotherhoods.³¹

In the meantime, Mr. Steelman continued his efforts to settle the dispute through mediation.³² Individual and joint conferences were held with the parties and the National Mediation Board was called in to aid the President's representative. On July 8, the parties to the dispute met with the President at the White House and it was formally announced that the dispute had been settled, largely through direct negotiations carried on by the parties with the help of Mr. Steelman.³³ On the following day, the railroads were returned to private management by the President, and on July 15, the government requested that the permanent injunction against the three operating organizations be vacated.

The final settlement reached by the parties embodied

³¹Traffic World, Vol. 82 (July 10, 1948), p. 34.

³²For an excellent summary of the position of the parties at this time, see U. S. Congress, Senate, Railroad Rules and Wage Disputes, Hearings before a Sub-committee of the Committee on Labor and Public Welfare, 80th Cong., 2nd Sess., on Railroad Rules and Wage Disputes, June 15, 1948 (Washington: Government Printing Office, 1948), pp. 1-50.

³³Traffic World, Vol. 82 (July 17, 1948), p. 47.

most of the recommendations of the Emergency Board, deviating only in two respects. The organizations concerned were granted a wage increase of 15-1/2 cents per hour, the same increase that had been received by the non-operating organizations and by the Order of Railway Conductors and the Brotherhood of Railroad Trainmen. Also, the recommendations of the Emergency Board on the rules issue were accepted except for two proposed revisions. It was agreed by the parties that these two rule changes would be worked out by further negotiations.³⁴

However, as one condition of the settlement, the carriers agreed to entertain a demand from the three operating organizations for a new wage increase of 14-1/2 cents per hour without requiring the usual 30 day notice period stipulated by the Railway Labor Act. The remaining operating organizations, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, then submitted a new demand to the carriers for a 25 per cent increase in wages.³⁵ Direct negotiations on these demands between the carriers and the five labor organizations began in Chicago, on September 14, 1948. Separate conferences were conducted by the carriers with the two employee groups during these negotiations.

On October 4, the carriers reached an agreement with the conductors and trainmen, granting a wage increase of 10

³⁴Ibid., p. 48.

³⁵Traffic World, Vol. 82 (September 11, 1948), p. 9.

cents per hour, effective October 16, 1948.³⁶ This basis for settlement was at first refused by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America, but negotiations were continued and on November 12, 1948, these organizations accepted the same wage increase previously granted the conductors and trainmen, retroactive to October 16, 1948.³⁷ Thus, the national wage and rule movements of the five operating organizations during 1947 and 1948 were finally concluded. In the meantime, the non-operating organizations had instituted a new wage and rules movement on a national scale.

The Movement of the Non-Operating Organizations
for New Work Rules, Higher Wages, and Shorter
Working Hours During 1948

In anticipation, perhaps, of the concessions granted the five operating organizations in their movement for revised working rules and higher wages during 1948, the non-operating organizations, representing sixteen groups of employees, began a new movement early in April, 1948.

On April 10, these organizations submitted the following demands to virtually all of the railroads in the United

³⁶Traffic World, Vol. 82 (October 9, 1948), p. 38.

³⁷Traffic World, Vol. 82 (November 20, 1948), p. 22.

States:³⁸

The Organizations' request:

(a) Establishment of a 40-hour workweek, Monday through Friday, with no reduction in take-home pay from the present earnings for a 48-hour week.

(b) Premium pay for all service on Saturdays, Sundays, and holidays with a minimum of 8 hours pay on any of these days; time and a half to be paid for Saturdays and double time for Sundays and holidays.

(c) A general increase of 25 cents an hour in addition to the adjustments necessary to maintain 48-hour earnings in a 40-hour week.

The carriers, in turn, presented the following counter proposals to the sixteen non-operating organizations:³⁹

(a) Changes in working rules and practices which the Carriers consider necessary and desirable for more efficient railroad operation if the employees' requests are granted, or

(b) A general wage increase of 10 cents an hour in settlement of all matters in dispute in the present case.

These proposals and counter proposals were the subject of bargaining on the individual carrier properties from May through August, 1948, but little progress was made in resolving the dispute and national conferences between the parties began on September 8. Negotiations on a national scale were continued until September 17, but no agreement was

³⁸Report to the President by the Emergency Board Created October 18, 1948 Pursuant to Section 10 of the Railway Labor Act, December 17, 1948 (Washington: Government Printing Office, 1948), p. 1. The organizations and carriers concerned are listed in Appendix D, pages 58-67, of this document.

³⁹Ibid.

reached. The non-operating organizations then distributed a strike ballot among the employees that they represented, and, since negotiations had been suspended and a strike appeared imminent, the carriers requested the National Mediation Board to intervene in the controversy on September 20. The Mediation Board began its mediatory efforts in Chicago, on September 23, and conferences were held with the parties to the dispute through October 6. The Board was unable to find any basis for agreement in the dispute and it was suggested that the parties submit their differences to arbitration--a proposal that was accepted by the carriers but declined by the organizations on the ground that the issues were not adaptable to that type of proceeding.⁴⁰

The National Mediation Board then notified the President that the dispute "threatened to interrupt interstate commerce," and on October 18, 1949, the President created an Emergency Board to investigate and submit a report on the controversy. The members of the Board were William M. Leiserson, Chairman, David L. Cole, and George A. Cook.

The Emergency Board held hearings in Chicago from October 26, through November 27. It became evident during the hearings that the Board could not complete its investigation and submit a report on the dispute within the period

⁴⁰Ibid., pp. 2-3.

required by law, and it was authorized to delay submission of its final report until December 17, 1948.

During the course of the public hearings, the Board attempted unsuccessfully on several occasions to achieve a settlement of the dispute through mediation conferences held separately with the parties. Since agreement between the parties, especially on the 40-hour work week issue, appeared to be impossible, the Emergency Board abandoned its mediatory efforts and submitted its report and recommendations to the President.

The evidence and testimony, submitted by the employees in support of their demands for a 40-hour work week, increased wages, and improved working conditions, was extremely involved and technical. In summary, the employees maintained that higher wages were necessary to offset the steadily increasing cost of living, that a 40-hour week was accepted practice in most American industries and should be established in the railroad industry, and that certain rules should be revised to eliminate existing inequitable working conditions. The carriers maintained, on the other hand, that the establishment of a 40-hour work week was not feasible and that, if the wage and hour demands made by the employees were granted, the total cost to the carriers would be in excess of 1-1/2 billion dollars.⁴¹

⁴¹Ibid., p. 28. These arguments are set forth in detail on pages 5-37.

In commenting on the cost figures submitted by the carriers, the Emergency Board termed them "hardly applicable to the realities of the facts of the case." In this connection, the following statement was made:⁴²

The Board's best estimate, based on the facts and evidence considered, is that when the Carriers inaugurate the 40-hour week . . . the maximum cost of the 40-hour week for the last 4 months of the year will be less than 18 cents an hour. Spread over the full year of 1949 this, then, would not exceed 6 cents per hour. The total hourly increase in wage costs for the non-operating employees in 1949, including the 7-cent general increase, (proposed by the Board) would therefore not exceed 13 cents, or about 340 million dollars for the year. This is about 80 million dollars more for 1949 than the Carriers think they should absorb, when compared with their 10-cent offer.

In subsequent years, the full effect of the adjusted workweek will be felt. It is believed, however, that in keeping with the experience of many years of increasing productivity and declining employment the industry will find the initial-cost burden diminishing as time goes on.

In submitting its report to the President on December 17, 1948, the Board made five general recommendations.⁴³ It held that the carriers should establish a 40-hour work week by September 1, 1949, the work week to be staggered so that the employees would be off on Saturday and Sunday when practical. The employees also had requested punitive pay for work on Saturdays, Sundays, and holidays, but the Board ruled that this demand should be denied. In reference to a general wage

⁴²Ibid., p. 20.

⁴³Ibid., pp. 37-39.

increase, the Board held that the employees should receive a wage increase of 7 cents an hour effective October 1, 1948, with monthly and weekly rates to be adjusted in accordance with the new hourly wage rate recommended. The changes in working rules proposed by the employees and by the carriers were remanded to the parties for further negotiations. However, the Board did make certain suggestions to be used as a guide by the parties in resolving the rules issue. Finally, specific suggestions were made to be followed in determining the new wage rates for dining car employees, maritime workers, and yard masters, as these employees ordinarily were on a monthly basis and not on an hourly rate.

The recommendations of the Emergency Board were not immediately accepted by either party to the dispute. The employees expressed "disappointment" in the Board's recommendations, but stated that the report "afforded a basis of negotiations with the carriers."⁴⁴ The carriers, on receiving the report, immediately placed a copy of it in the hands of the Interstate Commerce Commission as additional evidence of the need for a general rail rate increase being considered by the Commission at that time.⁴⁵

On January 5, 1949, the parties to the controversy

⁴⁴Traffic World, Vol. 82 (December 25, 1948), p. 42.

⁴⁵Ibid., pp. 44-45.

resumed direct negotiations in an effort to obtain a settlement to the dispute satisfactory to both the employees and the carriers.⁴⁶ Conferences were continued intermittently until March 20, 1949, at which time an agreement was signed concluding the controversy on the terms established by the recommendations of the Emergency Board.⁴⁷

Summary

There were three disputes of national interest during 1947 and 1948 in the railroad industry. The first controversy developed from demands of the non-operating organizations for a wage increase of 20 cents per hour. Direct negotiations and mediation were unsuccessful, but the parties finally agreed to submit the issues to a board of arbitration. The employees, in supporting their position before the board, contended that living costs were increasing rapidly, that reductions in the number of hours worked per week had reduced "take-home" pay, and that the wages of railroad employees had not advanced as rapidly as the wages of employees in other industries. On the other hand, the carriers maintained that the wage level in the railroad industry exceeded the "general level of compensation" in other industries, that a wage increase could not be justified on the basis of living costs, and that wages could

⁴⁶Traffic World, Vol. 83 (January 15, 1949), p. 64.

⁴⁷Traffic World, Vol. 83 (March 26, 1949), p. 90.

not be increased without "serious injury to the public interest." After careful consideration of the evidence submitted, the arbitration board awarded a wage increase of 15-1/2 cents per hour to the employee groups.

The second controversy developed from demands of the five operating organizations for 44 rule changes and a 30 per cent increase in wages. At a very early stage in these negotiations, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen broke away from the other operating groups and accepted a wage increase of 15-1/2 cents per hour. The rules issue was resolved by both parties agreeing to withdraw certain proposals and settling the remainder by direct negotiations. The Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America refused to accept this settlement, and, after arbitration was suggested and declined by the employees, an emergency board was appointed to consider this controversy.

The three employee organizations in supporting their position before the board, maintained that they were entitled to "the 15-1/2 cents pattern of 1947" as well as to "the 1948 pattern which is being paid to group after group." The carriers, in opposing these demands, contended that any wage increase granted by the board had to conform to the agreements previously reached with the non-operating groups and the two operating unions. Both parties presented extensive testimony

regarding the rule changes requested by the employees, but the employees absolutely refused to consider any of the changes suggested by the carriers. In its recommendations, the emergency board held that the employees were entitled to a 15-1/2 cent wage increase, and it made certain recommendations in relation to the rules issue. However, the board pointed out that the failure of the parties to resolve the rule issues by negotiations constituted "a danger which threatens the very foundations of the collective bargaining relationship in this industry."

The recommendations of this board were denounced by the employee groups and, following a strike threat, the President personally intervened in the dispute. The railroads were seized by the government and conferences were resumed with the President's personal representative acting as mediator. The dispute was ultimately settled by an agreement which gave all five operating organizations an additional wage increase of 10 cents per hour.

The third dispute during this period developed from demands by the non-operating employees for a 40-hour work week, premium pay for Saturdays, Sundays, and holidays, and a general wage increase of 25 cents per hour. In a counter proposal, the carriers offered to meet these demands in return for certain changes in the existing working rules or, as an alternative, a general wage increase of 10 cents an hour in

settlement of all of the issues was suggested. These proposals and counter proposals were considered in direct negotiations, but the controversy was not resolved and an emergency board was appointed. In due course, this board recommended the establishment of a work week of forty hours for all employees concerned, and a wage increase of 7 cents an hour was suggested. The rules issue was remanded to the parties for further negotiations. In the course of its findings, the board severely criticized some of the cost estimates submitted by the carriers as being entirely unrealistic and "hardly applicable to the facts of the case."

It is difficult to find much fault with the awards and recommendations of the arbitration and emergency boards which served during this period. The decisions which were made appeared to be in accordance with the facts and evidence which were submitted, and at no time was there any indication of arbitrary or unreasonable action. However, the awards and recommendations of this period, like those of earlier periods, were in the nature of compromises, and the labor organizations were not willing to accept compromise solutions except as a last resort.

The general economic situation in the country was one of postwar prosperity. The financial situation of the railroads was reasonably satisfactory. The cost of living of the railroad workers, like that of other workers, was going up.

Workers in some other industries were succeeding in getting their wages tied to the rising cost of living. Indeed, organized workers in general were enjoying considerable success in inducing employers to meet their wage and other demands. In this situation, the railroad labor organizations were moved to follow a pattern of action which had already appeared in some earlier controversies.

There apparently was no intent to settle the disputes in the primary direct negotiations with the carriers, and mediation efforts were doomed to failure. The employee organizations usually refused to consider arbitration. Following the findings of emergency boards (or, in some cases, arbitration boards), the organizations customarily refused to accept the settlements and the disputes were renewed in an effort to obtain additional concessions. These tactics had been successful in the past and were successful in some degree during this period, even though they were contrary to the spirit and intent of the Railway Labor Act. In addition, it was very evident at times that some of the organizations were determined to achieve settlements which were more favorable than those obtained by other employee groups.

However, the employees were not entirely responsible for the difficulties encountered in settling disputes during this period. There were many indications that the carriers did not enter into direct negotiations with much enthusiasm,

and at times they overstated their position and found themselves in an untenable situation. Finally, both the carriers and the employees were responsible for the failure to resolve some of the rule issues directly. As stated by an emergency board, the inability of the parties to settle such matters through direct negotiations constitutes a dangerous threat to collective bargaining in the railroad industry.

CHAPTER IX

THE NATIONAL WAGE AND RULE MOVEMENTS OF 1949 AND 1950

Following the successful efforts of the non-operating organizations during 1948 to obtain a 40-hour work week and a wage increase to offset the reduction in hours worked per week, the five operating brotherhoods and the Railroad Yardmasters of America began a series of movements for shorter hours, higher wages, and the revision of certain working rules. These demands were not uniform and they were not submitted to the carriers at the same time. The operation organizations elected to present their requests independently, although at times two or more brotherhoods united in pressing their demands upon the carriers. During the course of events, the services of four separate emergency boards were utilized in attempts to resolve these controversies, while an arbitration board was created to decide the issues in one instance. As a result, the movements on the part of the operating brotherhoods which originated during 1949 and which were not settled in all cases until 1952 were extremely involved. During this period, the government was forced to seize the railroad industry on August 27, 1950, and the carriers were not returned to private management until May 25, 1952. This period of government operation and control was the longest since federal

operation of the railroads during World War I.

The Joint Movement of the Brotherhood of Railroad
Trainmen and the Order of Railway Conductors

On March 15, 1949, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen submitted an extensive list of demands to the nation's carriers. Five days later, the carriers, represented by the Eastern, Western, and South-eastern Carriers' Conference Committees, presented certain counter proposals to the two organizations. Direct negotiation of these issues on a national basis began on September 22, 1949, and were continued until December 14. Since the parties were completely deadlocked at that time and there appeared to be no possibility of attaining a mutually satisfactory agreement, the carriers invoked the services of the National Mediation Board. The Board began conferences with the parties on January 16, 1950, but its efforts were not successful and the Board proposed that the issues be submitted to arbitration. Arbitration was declined by the two operating organizations as they maintained that the issues were not adaptable to arbitration, and a strike was announced by the employees to become effective February 27, unless a satisfactory settlement could be achieved in the meantime. On February 24, President Truman created an emergency board to

investigate and submit a report on the dispute.¹

This Emergency Board, which was composed of Roger I. McDonough, who served as Chairman, Mart J. O'Malley, and Gordon S. Watkins, began its investigation on March 2, and hearings were held through March 9, 1950. All parties to the dispute were given an opportunity to present their respective positions on the matters in question. Prior to the conclusion of the public hearings, the Emergency Board offered its services to the parties in a mediatory capacity, but its efforts at mediation were unavailing, and after two extensions of time for submission of its report, the Board submitted its findings and recommendations to the President on June 15, 1950.

The issues presented to the Emergency Board were exceedingly complex. The two operating organizations had submitted twelve major proposals to the carriers. The following list summarizes their principal demands: (1) the establishment of a forty-hour work week for yard service employees while maintaining pay for 48 hours, with time and one-half for Sundays and holidays, and an increase of 2-1/2 cents per hour in the basic daily wage rate; (2) the restoration of a wage differential for car retarder operators; (3) the establishment of a wage differential for footboard yardmasters;

¹Sixteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1950 (Washington: Government Printing Office, 1950), p. 11.

(4) the institution of new methods of computing wage rates, based on the weight of the locomotive being operated, for all classes of employees represented; (5) the restoration of "standard" wage rates between the three major railroad operating territories; (6) the adoption of 100 miles as the basic passenger mileage service day (the existing basic mileage day was 100 miles for road freight service and 150 miles for passenger service); (7) the extension of the principle of time and one-half for overtime to passenger service; (8) the elimination of "unreasonable and unnecessary" delays at the initial terminal with the establishment of punitive pay for the employees where the carrier was responsible for such delay; (9) the establishment of an expense allowance for time spent by the employee away from the home terminal; (10) the institution of an additional allowance for those employees who handled the United States mail; (11) the establishment of twelve new service rules for dining car stewards; and finally, (12) the application of these same rules to dining car cooks.²

The carriers, in turn, had submitted thirteen major counter proposals to the employee organizations. These proposals may be summarized as follows: (1) the establishment

² Report to the President by the Emergency Board Appointed February 24, 1950, Pursuant to Section 10 of the Railway Labor Act, June 15, 1950 (Washington: Government Printing Office, 1950), p. 3.

of a forty-hour work week for yard service employees under certain conditions; (2) the granting of a special allowance in lieu of claims for time and one-half pay for overtime; (3) the elimination of all rules which provided for pay to employees for time in which they were held away from their home terminal; (4) the institution of a work rule which would change the basic passenger service day from 150 miles to 200 miles and change the basic through freight service day from 100 miles to 125 miles; (5) the establishment of new rules governing the assignment of operating crews to interdivisional and intradivisional runs; (6) the revision of an existing rule which would give the carrier the privilege of pooling cabooses and operating them over two or more divisions (under the existing rule, a caboose was assigned exclusively to a single operating crew within a division); (7) the establishment of a rule requiring road and yard conductors, trainmen, and yardmen to couple or uncouple air hose, signal hose, or steam hose, and to chain or unchain cars as might be necessary without extra pay; (8) the elimination of all rules which established daily, weekly, or monthly wage guarantees; (9) the elimination of all rules prohibiting the reduction of work crews in passenger service or the increasing of the basic daily passenger mileage requirement; (10) the establishment of a rule which would require road service crews to perform yard switching service when necessary; (11) the elimination of all rules

prohibiting the carrier from changing the limits of a switching yard; (12) the revision of those rules relating to the time for reporting for duty for road service employees; and (13) the elimination of all rules which restricted train lengths or the amount of tonnage carried in a single train.³

It would be impractical to summarize all of the arguments and evidence submitted by the parties in support of their demands and counter demands before the Emergency Board. Basically, the issues were simpler than would appear from the proposals of the parties. According to the employees, the principal issue was the establishment of a five-day forty-hour work week for all yard service employees, with no reduction in pay from the existing six-day work week. The other proposals made by the employees were to implement the proposed work week, and to eliminate existing "inequities" among various classes of employees represented. On the other hand, the carriers were willing to establish a 40-hour work week for yard service employees, but it was urged that existing total weekly wages could not and should not be maintained. Other proposals made by the carriers were to "cushion the shock" of establishing the shorter work week, and to improve the efficiency of railroad operation under these new conditions.

³Ibid., pp. 3-4. The positions of both parties in relation to these proposals and counter proposals are set forth in detail on pages 5-167 of this document.

In supporting their demands before the Board for a forty-hour week with no reduction in pay from the existing six-day week, the employees advanced several arguments. Primary among these arguments was the "increased productivity" of the worker. It was maintained that output per man-hour had increased between 1921 and 1949 by approximately 102 per cent, an increase averaging 3 per cent annually for the entire period. Statistics were introduced which indicated that revenue traffic units per employee had increased 2-1/2 times between 1921 and 1948, and that if it were not for increased productivity the railroads would have been forced to hire 500,000 new employees between 1939 and 1950. To state the argument in another way, forty employees in 1948 were doing the same amount of work as 100 employees in 1921. This increased productivity, it was contended, had not been reflected by a corresponding increase in wages. It was stated that employees in manufacturing, mining, and agriculture had enjoyed advances in real wages between 1921 and 1949 in excess of 100 per cent, while real wages in the entire railroad industry had increased only 82 per cent. In this same period, the real wages of railroad yard service employees had increased only 52 per cent. Thus, there were both inter-industry and intra-industry inequities which should be corrected.

It was also argued that the 40-hour week was enjoyed by workers throughout American industry, and that since the

non-operating employees had been granted a 40-hour week in September, 1949, and road service employees worked approximately 40 hours per week, the yard service employees represented virtually the only major segment in American industry which did not have a short work week. It was contended that a five-day week should be established without reducing "take-home" pay in order to maintain the historical relationship between the wages of yard service employees and the wages of employees in comparable industries, as well as within the railroad industry. Also, the two organizations emphasized that the maintenance of "take-home" pay was necessary to the "welfare and expansion of the productive economy." It was maintained that economic advancement could be measured in terms of increased output per man-hour, reduced hours of work, and increased real wages, and that when technological improvements occurred, hours of work should be reduced without reducing wages to insure stable purchasing power and the "continuation of national prosperity."⁴

The carriers, in supporting their counter proposals before the Emergency Board, based their arguments on three principal considerations. First, the carriers maintained that the employees had not presented any "competent or creditable evidence" to support their demands for a 40-hour week.

⁴Ibid., pp. 5-25.

Secondly, it was declared that, if a shorter work week was deemed desirable by the Board, and the carriers announced their willingness to establish a 40-hour week if necessary, the new work week should be inaugurated without maintenance of "take-home" pay. Thirdly, the carriers contended that if such a work week was established, certain existing rules should be revised and other rules should be instituted in order to minimize the effect of the proposed changes on railroad operation and to improve railroad operating efficiency.

These basic arguments were greatly amplified by the carriers. It was urged that there were a great many reasons why a shorter work week should not be established. In the first place, the carriers stated that all yard service employees, in reality, had a 40-hour work week, if they so desired. It was pointed out that "extra boards" were maintained to provide relief men for regular employees, and that yard service employees could work 30, 40, or 50 hours per week, as they saw fit. Secondly, the carriers maintained that the employees really did not want a scheduled 40-hour week, but that the demand was made by the two operating organizations when it appeared difficult to obtain a direct wage increase. As proof that the employees did not want a shorter work week, the carriers stated that those men with the greatest seniority ordinarily exercised their rights to obtain 7-day work assignments which provided maximum earning

opportunities. In the third place, the carriers contended that a shorter work week would greatly increase the expenses and the difficulties of yard operations, especially in the smaller yards. As yard service is a seven day operation, it was argued that even in the largest yards, five day work assignments could not be made without the payment of wages for deadheading, for punitive overtime, and for "time not worked." In summary, the carriers maintained that the operating organizations concerned had two principal objectives in demanding a 40-hour week with 48 hours pay. The first purpose, it was stated, was to obtain a 20 per cent increase in pay, without which the organizations would not even consider a shorter work week. The second objective was "to make work," "to create jobs," and "to add to the membership of the Organizations." It was contended that while the employees did not want the shorter work week, the organizations did, not to protect the work opportunities of existing members, but to expand the work as a means of "recruiting additional members to enhance the power and influence of the Organizations."⁵

The Board submitted its findings and recommendations to the President on June 15, 1950. In relation to the proposals of the two employee organizations, the Board found that their major demands should be granted. A basic five-day,

⁵Ibid., pp. 14-17.

40-hour work week was recommended to become effective October 1, together with a wage increase of 18 cents per hour, or \$1.44 per basic day. In lieu of the existing minimum daily earnings guarantee, the Board recommended that basic daily wage rates be increased 2-1/2 cents per hour and that all minimum wage guarantees be eliminated. Also, the Board held that overtime pay should be granted for all time in excess of 8 hours per day or 40 hours per week. Differentials for car retarder operators and footboard yardmasters were recommended and the Board suggested that allowance to baggage men for handling the United States mail be slightly increased. The remaining important proposals of the two operating organizations were either remanded to the parties for further negotiations or the Board recommended that they be withdrawn.⁶

The Board gave detailed consideration to the counter proposals made by the carriers. It was found that any restrictions which existed in the working rules in regard to interdivisional runs and the assignment of work crews to those runs should be eliminated, provided that the work was distributed equitably and seniority rights were protected. In addition, the Board held that the pooling of cabooses should be permitted, that trainmen and yardmen should couple and uncouple air, steam, or signal hose without extra pay where

⁶Ibid., pp. 167-170.

carmen were not available, and that the carriers should be permitted to expand or contract switching yard limits to conform to existing switching needs. These recommendations were made to eliminate certain rules or operating practices which tended to curtail the efficiency of the carriers. Other proposals made by the carriers were remanded to the parties for further negotiations or the Board recommended that they be withdrawn.⁷

The recommendations of the Emergency Board were accepted by the carriers but they were immediately rejected by the Brotherhood of Railroad Trainmen and the Order of Railway Conductors as being entirely unsatisfactory. Accordingly, representatives of the parties resumed direct negotiations on June 21, 1950. These conferences were not successful, and on June 25, the National Mediation Board once again proffered its mediatory services. Conferences were continued intermittently in Chicago and in Washington until August 23, without conclusive results. In the meantime, the two organizations announced a nation-wide strike to become effective at 6:00 A. M., August 28, 1950. On August 27, President Truman seized the nation's railroads by Executive Order and placed them under the control of the Secretary of the Army for operation.⁸

⁷Ibid., pp. 170-172.

⁸Seventeenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1951 (Washington: Government Printing Office, 1952), p. 8.

During the development of the dispute between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen and the carriers, the Switchmen's Union of North America, the Railroad Yardmasters of America, the Brotherhood of Locomotive Firemen and Enginemen, and the Brotherhood of Locomotive Engineers, each acting independently, served certain demands upon the carriers. The Switchmen's Union of North America and the Railroad Yardmasters of America continued to act independently until a final settlement was reached with the railroads, but the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen joined the Order of Railway Conductors and the Brotherhood of Railroad Trainmen in pressing their demands upon the carriers shortly after the railroads were seized by the government. For a better understanding of these controversies, the disputes between the carriers and the yardmasters and switchmen should be considered separately, even though the final settlements in all of these controversies were mutually related.

The Controversy Between the Switchmen's Union of North America and Certain Western Carriers

On September 20, 1949, the Switchmen's Union of North America served notice upon a group of western carriers that certain changes were desired in existing working agreements.⁹

⁹The following carriers were involved: Chicago, Great Western Railway Co.; Chicago, Rock Island and Pacific Railroad

These notices, which were served upon the individual properties, requested the carriers to modify the existing working agreements so as to establish a 40-hour week with no reduction in "take-home" pay from 48 hours per week and to provide for double-time for all time worked in excess of 8 hours per day or 40 hours per week. Also, double-time was demanded for all work on Sundays and holidays. In addition, the organization requested a pay differential for car retarder operators and footboard yardmasters together with other minor rule revisions to effectuate its major proposals.¹⁰

The carriers made certain counter proposals to the organization and direct negotiation of the issues were continued with relatively little progress until March 8, 1950. At that time, both parties to the dispute requested the intervention of the National Mediation Board, but the mediatory efforts of the Board failed and arbitration was refused by the employee representatives.

President Truman, on March 20, recognized that an

Co.; Davenport, Rock Island and Northwestern Railway Co.; The Denver & Rio Grande Western Railroad Co.; Great Northern Railway Co.; The Minneapolis & St. Louis Railway Co.; The Railway Transfer Co.; The Northern Pacific Terminal Co. of Oregon; The St. Paul Union Depot Co.; The Sioux City Terminal Railway Co.; and The Western Pacific Railroad Co.

¹⁰ For a complete statement of these proposals see: Report to the President by the Emergency Board Created March 20, 1950, Pursuant to Section 10 of the Railway Labor Act, April 18, 1950 (Washington: Government Printing Office, 1950), pp. 7-10.

emergency existed and appointed an Emergency Board to investigate and report upon the dispute. This Board consisted of Roger I. McDonough, who acted as Chairman, Mart J. O'Malley, and Gordon S. Watkins, the same men who were currently engaged in hearing the dispute between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen and the carriers. Hearings were instituted on March 27, 1950, at which time the Board indicated that it desired the parties to consider the possibility of holding concurrent hearings in both disputes as the issues were virtually the same. This proposal was agreed to by the carriers, but the Switchmen's Union insisted that the hearings be conducted separately and that the findings of the Board be made within the thirty day period required by law. Having reached an impasse, the Board decided to recess the hearings and submit its report on the appropriate date unless the employee organization suggested a "thorough and fair" method of hearing the issues.

As no suggestions were received from the switchmen, the Board submitted its report to the President on April 18, 1950, without further hearings. The chief recommendations of the Emergency Board were as follows:¹¹

- a. If no further hearings be held, the same treatment shall be accorded the employees represented by the Switchmen's Union of North America

¹¹Ibid., pp. 12-13.

as may be accorded the yard employees represented by the Order of Railway Conductors and the Brotherhood of Railroad Trainmen in so far as the proposals for the 40 hour workweek and any other identical issues are concerned.

With regard to the issues which are not identical, but similar, adjustments of the same general character shall be made in so far as is possible within the framework of the requests. Different treatment cannot be accorded these groups of yard service employees without seriously disrupting established wage and rule relationships and generally disturbing labor relations on the railroads.

b. A further opportunity might well be given the Switchmen's Union of North America to present any new evidence on any phases of the matters in dispute on which it desires to be heard, and in order that this may be accomplished the President may wish either that this Board not consider itself discharged with the making of this report and that there be an extension of time within which to make a terminal report to June 1, 1950, or such further time as may be required by the Board to make findings and recommendations on the issues now in the process of examination.

The Board awaits the President's pleasure in this matter

The effect of the Emergency Board's recommendations was to accord the Switchmen's Union of North America the same consideration as given the conductors and trainmen in the report of the Emergency Board subsequently rendered on June 15, 1950. The Switchmen's Union was not satisfied with this recommendation, and a strike was authorized to begin at 6:00 A. M., May 23, 1950, on the lines of the western carriers concerned.

On May 19, the National Mediation Board again extended its services and requested the organization to postpone the effective date of the strike, pending additional mediation

conferences. The strike date was first extended by the union to June 1, and then to June 25, but, since the carriers were not willing to offer any concessions beyond the recommendations of the Emergency Board, the organization called a strike at 6:00 A. M. on that date. The strike affected the Chicago, Rock Island & Pacific Railroad Company; the Great Northern Railway Company; the Chicago, Great Western Railway Company; the Denver & Rio Grande Western Railroad Company; and the Western Pacific Railroad Company.

The members of the National Mediation Board continued to exert every effort to end the work stoppage and the Switchmen's Union was repeatedly requested to direct the employees to return to service and permit concurrent handling of their dispute with the dispute involving the conductors and trainmen. However, these requests were rejected by the Switchmen's Union and the strike continued until July 7, 1950. On that date, the organization directed the employees that it represented to return to service on all of the railroads named above, except the Chicago, Rock Island and Pacific Railroad Company. At the same time, President Truman seized the Rock Island Railroad by Executive Order, and a temporary injunction was obtained against the union prohibiting the continuation of the strike. Those employees who were still on

strike immediately returned to service.¹²

Subsequent to the employees' return to service, negotiations were instituted by the parties which culminated in a final agreement executed September 12, 1950. Actually, this settlement consisted of three agreements. One of these agreements, known as Agreement A, established the 40 hour week effective October 1, 1950, and provided for certain rule and wage revisions; Agreement B deferred the establishment of a 40-hour week; and an Interim Agreement instituted a six-day week effective until January 1, 1952, after which the union might request and obtain a five-day week on three months notice. The major provisions of Agreement A relating to rule and wage changes were as follows:¹³ (1) a wage increase of 5 cents per day for yard foremen and helpers to become effective July 1, 1950; (2) a wage increase of 23 cents per hour for all employees represented to become effective October 1, 1950; (3) a cost-of-living adjustment factor of 1 cent per hour for each change of 1 point in the Bureau of Labor Statistics cost-of-living index, beginning January 1, 1950, the

¹²Sixteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1950 (Washington: Government Printing Office, 1950), pp. 11-13.

¹³Seventeenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1951 (Washington: Government Printing Office, 1952), p. 7.

base index figure to be 174.0; (4) any agreements which restricted the coupling or uncoupling of air, steam, or signal hose by switchmen were to be modified to permit the performance of this work without penalty payment; (5) the carrier was given the right to expand or contract the limits of a switching yard in conformance with existing switching requirements; and (6) both parties agreed upon a moratorium on proposed changes in rates of pay, rules, or working conditions for a period of three years from October 1, 1950, except for rule changes initiated prior to June 1, 1950. In the meantime, the dispute between the carriers and the Railroad Yardmasters of America had become of national interest and this controversy should now be considered.

The Dispute Between Certain Carriers and
the Railroad Yardmasters of America .

On April 10, 1948 the Railroad Yardmasters of America presented a list of demands to the individual carriers with which they held contracts.¹⁴ The organization requested a 40-hour work week with 48 hours pay, payment for work on Saturday at time and one-half, payment for work on Sundays and holidays at double time, and a general wage increase of 25 cents per hour. The carriers submitted a counter proposal to the union,

¹⁴For a list of the 66 carriers concerned see: Report to the President by the Emergency Board Created April 11, 1950, Pursuant to Section 10 of the Railway Labor Act, June 15, 1950 (Washington: Government Printing Office, 1950), pp. 15-16.

and in September, 1949, the organization slightly modified its demands, but the parties were not able to reach an agreement upon the issues involved. Continued conferences between the carriers and the organization were not successful, and on January 11, 1950, the services of the National Mediation Board were invoked by the carriers. The mediatory efforts of the Board failed and arbitration was proposed, but the parties could not agree upon the issues to be submitted to arbitration and this effort to effect a settlement failed, even though both groups accepted arbitration in principle.

On April 11, 1950, President Truman appointed an Emergency Board to investigate and report on this dispute, since the organization had set a strike date for 6:00 A. M., April 12. This Board, which was composed of the same men who were considering the disputes between the carriers and the Switchmen's Union of North America, and the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, met with the parties on April 24, 1950. It was agreed that immediate hearings would be postponed, as the Board was preoccupied with the dispute involving the conductors and trainmen, and consideration of the yardmasters demands did not begin until May 11, 1950.¹⁵

The issues presented to the Board and the arguments

¹⁵Ibid., pp. 2-5.

of the parties were almost exactly the same as those set forth in the other disputes being considered by the Board. The yardmasters demanded a 5-day week without a reduction in pay, a general wage increase of 25 cents per hour, and the revision of certain rules to effectuate the proposed work week. The carriers contended, in turn, that the question of a 5-day work week together with any wage adjustments made, necessitated a thorough consideration of the merits of such a work week for supervisory employees. Also, the carriers proposed that the working rules in effect should be extensively revised, if the shorter work week was recommended by the Board.

The Emergency Board submitted its recommendations to the President on June 15, 1950, the same date on which it submitted a report on the conductor's and trainmen's controversy. The Board ruled that a 5-day work week for yardmasters was "feasible" and that such a work week should be placed in effect, but it recommended that the salaries of yardmasters should be reduced one-sixth. To offset this reduction in pay, the Board held that the basic hourly wage rate for yardmasters should be increased 18 cents per hour and that the rule changes necessary to effectuate these recommendations should be decided by the parties in further negotiations.¹⁶

¹⁶Ibid., pp. 11-12.

The Board's recommendations were rejected by the Railroad Yardmasters of America and negotiations between the parties were renewed. A final settlement was reached under the auspices of the White House on November 2, 1950. This agreement, which embodied the principal features of the settlement reached by the carriers and the Switchmen's Union of North America on September 21, 1950, also was divided into three parts. One section, known as Agreement A, provided for a 40-hour week effective October 1, 1950; a second section, termed Agreement B, deferred the institution of a 5-day week until January 1, 1952; and a third section, an Interim Agreement, provided for a period of transition to the shorter work week and for certain adjustments in the wage scale. Under the wage clause of the interim agreement, the basic monthly wage rate for yardmasters was reduced one-sixth, and to this new rate, an increment of \$46.00 per month was added. In addition, the settlement contained the cost-of-living adjustment factor granted to the Switchmen's Union, and placed a three-year moratorium on any new proposals for changes in wages, rules, or working conditions.¹⁷

In this manner, the disputes between the carriers and the Switchmen's Union of North America and the Railroad

¹⁷ Seventeenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1951 (Washington: Government Printing Office, 1952), p. 8.

Yardmasters of America were finally concluded, but controversies between the carriers and the remaining operating brotherhoods were still to be resolved.

The Concerted Movement of the Order of Railway
Conductors, the Brotherhood of Railroad
Trainmen, the Brotherhood of Locomotive
Engineers, and the Brotherhood of
Locomotive Firemen and Enginemen

As indicated previously, the Brotherhood of Railroad Trainmen and the Order of Railway Conductors, acting in concert, submitted certain demands to the carriers in March, 1949. This dispute ultimately resulted in government seizure of the railroads on August 27, 1950. In the meantime, the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, each acting independently, had served certain demands upon the railroads of the nation.

On November 1, 1949, the Brotherhood of Locomotive Firemen and Enginemen demanded the establishment of a five-day week with 48 hours pay for all firemen, hostlers, and hostlers helpers, effective December 1, 1949, with all service in excess of 8 hours per day or five days per week, and on legal holidays, to be paid at the rate of time and one-half. The Brotherhood of Locomotive Engineers, on January 5, 1950, requested an increase of 20 per cent in the basic wage rate for engineers in yard service, the payment of time and one-half for five specified holidays, and the guarantee of a basic day's pay for all yard engineers assigned to "extra boards" for each

day of such assignment. For engineers in road freight service, the brotherhood demanded a guaranteed monthly wage based on 3200 miles for all classes of service; the guarantee of a basic days pay for each day a road engineer was assigned to an "extra board"; the establishment of a monthly wage guarantee based on 4000 miles for all men in passenger service; and finally, the payment of an allowance of 25 cents per hour for "expenses" for all time spent away from the home terminal by the employee.¹⁸

These demands were first negotiated on the individual properties, but on October 5, 1950, the two organizations began joint conferences with representatives of the carriers in Washington, D. C. Late in October, the Brotherhood of Locomotive Engineers, joined by the carriers, requested the intervention of the National Mediation Board, but neither party applied for mediation of the wage proposals made by the Brotherhood of Locomotive Firemen and Enginemen. On November 3, 1950, the Brotherhood of Locomotive Engineers served an additional demand on the carriers for a 20 per cent wage increase for road engineers. This request was followed by demands from the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Railroad Trainmen, and the Order of Railway Conductors for a wage increase of 35 cents per hour for all

¹⁸Ibid., p. 9.

employees represented by these organizations.¹⁹ The National Mediation Board continued its efforts to resolve these disputes, and on November 21, 1950, all four organizations, acting as a single group, began new conferences with the carriers under the auspices of the White House.

During these meetings, the Brotherhood of Railroad Trainmen began a series of "wildcat" or "sick" strikes in various important rail centers throughout the country. The Secretary of the Army, who was charged with operation of the railroads during the period of government seizure, obtained temporary injunctions prohibiting these strikes, and following a personal appeal from President Truman on December 15, the employees concerned returned to service. However, negotiations were continued, and on December 21, a so-called "memorandum agreement," proposed by John R. Steelman, was signed at the White House by all four of the brotherhoods and by the carriers.

This tentative agreement provided for a 40-hour week for all employees in yard service, effective October 1, 1950, with an increase in wages of 23 cents per hour, and an additional wage increase of 2 cents per hour, effective January 1, 1951. However, the forty-hour week was to be set aside until

¹⁹It is noteworthy that these new wage demands were presented shortly after the wage settlement achieved by the switchmen and yardmasters.

January 1, and a six-day week was established for yard service employees. Other "fringe benefits" and minor wage adjustments were authorized, and the parties agreed to settle certain troublesome rule issues. The rules to be revised included those pertaining to initial terminal delay; the assignment of crews to interdivisional runs; the pooling of cabooses; the limitations on changes in boundary of a given switching yard; the coupling and uncoupling of air, signal, and steam hoses; and the limitations on double-heading and train tonnage. This agreement was submitted to the general committees of the brotherhoods for approval, but all four committees rejected the tentative settlement as "unsatisfactory" and instructed their negotiating committees to obtain a more favorable settlement.²⁰

Representatives of the brotherhoods returned to Washington on January 17, 1951, and conferences with the President's representatives and members of the National Mediation Board were renewed. On January 19, the dispute was returned to the Mediation Board for further handling with the parties, and on January 29, the Brotherhood of Railroad Trainmen began a new series of "wildcat" and "sick" strikes in Chicago, Washington, St. Louis, and other important rail centers. In response to this development, the government filed petitions for contempt

²⁰Seventeenth Annual Report of the National Mediation Board, p. 10.

citations in certain United States District Courts, and the brotherhood was fined a total of \$100,000 for violating the injunction restraining such strikes issued in December, 1950.²¹

The striking trainmen returned to work on February 8, 1950, in compliance with a general order issued by Assistant Secretary of the Army Bendetsen, in which they were instructed to return to work within 48 hours or face dismissal with full loss of all seniority rights. The order also granted a wage increase of 12-1/2 cents per hour for all men in yard service, and 5 cents per hour for all men in road service, effective October 1, 1950.

These developments attracted the attention of Congress and in late February, the Senate Committee on Labor and Public Welfare began an extensive investigation of the difficulties which prevented a peaceful settlement of this controversy. The findings of this Committee were published in June, but Congress did not take any legislative action since the report failed to make any specific recommendations and the general conclusions of the Committee were sharply criticized in a minority report signed by Senators Robert A. Taft, H. Alexander Smith, and Richard M. Nixon.²² The minority group stated

²¹Ibid., p. 11.

²²See: U. S. Congress, Senate, Hearings Before the Committee on Labor and Public Welfare on Labor Dispute Between Railroad Carriers and Four Operating Brotherhoods, 82nd Cong.,

their principal objections to the methods and conclusions of the majority in the following manner:²³

We seriously question the wisdom of the committee holding hearings and publishing a report on a pending labor-management dispute;

We do not think it is the proper function of the committee, nor do we believe the committee is qualified to make recommendations concerning the merits of a pending labor-management dispute;

We think the hearings and the report are inadequate and inappropriate as a basis for sound legislative proposals by the committee in the field of labor-management relations in the railway industry.

In the meantime, the National Mediation Board had presented a new plan for the settlement of the dispute to the four organizations. This plan, which was based on the "memorandum of agreement" signed by the parties to the controversy on December 21, 1950, was accepted as a basis for further negotiations by the Brotherhood of Railroad Trainmen, but it was rejected by the other three organizations. After February 24, 1951, the Brotherhood of Railroad Trainmen began independent conferences with the carriers, and with the assistance of the National Mediation Board, a final agreement was consummated on May 25, 1951. The settlement provided for the

1st Sess. (Washington: Government Printing Office, 1951), and U. S. Congress, Senate, Committee on Labor and Public Welfare, Dispute Between the Railway Carriers and Four Operating Brotherhoods, Sen. Report 496, together the Minority Views, 82nd Cong., 1st Sess. (Washington: Government Printing Office, 1951).

²³Ibid., p. 23.

acceptance of the major provisions of the "memorandum agreement" signed in December, 1950, which had established a forty-hour week, granted a wage increase of 25 cents an hour, and provided for certain rule revisions.

However, the carriers had proposed two rule revisions which the brotherhood was unwilling to accept and these issues were submitted to arbitration. These rule changes, which pertained to the coupling and uncoupling of air, steam, and signal hose, and the wage payments to be made to an employee who performed two classes of service in a single tour of duty, were decided by Mr. George Cheney, a neutral referee appointed by President Truman. His award was issued on August 1, 1951, and provided that an employee who performed two or more classes of service in a single day should be paid for the entire day at the highest rate applicable to any class of service which was performed. Where rules prohibited or restricted road trainmen from coupling or uncoupling hose, these rules were to be eliminated, except when existing rules provided for payment for the performance of this duty, in which case payment was to be limited to 95 cents per hour.²⁴

During the period in which the Brotherhood of Railroad Trainmen reached a final agreement with the carriers, the remaining operating organizations continued conferences with the

²⁴Seventeenth Annual Report of the National Mediation Board, p. 12.

railroads under the auspices of the National Mediation Board. On April 28, 1951, the Order of Railway Conductors, the Brotherhood of Locomotive Engineers, and the Brotherhood of Locomotive Firemen and Enginemen submitted a proposed plan of settlement to the carriers, but this plan was rejected. At the same time, the carriers announced their willingness to carry out the provisions of the "memorandum agreement" of December, 1950, which had been accepted by the Brotherhood of Railroad Trainmen. At the request of the National Mediation Board, the carriers presented to the three organizations a complete plan of settlement implementing the provisions of the "memorandum agreement," but this basis of agreement was rejected by the three chief executives of the brotherhoods on June 28, 1951.

During July, the three organizations announced that they were prepared to submit the controversy to arbitration, if a "satisfactory" agreement to arbitrate could be reached and if the parties were able to agree on a "neutral" arbitrator. In reply to this proposal, the carriers submitted to the organizations a list of the issues which they were willing to arbitrate, but representatives of the organizations announced on August 21, that the carrier's proposal was "unacceptable" as a basis for resolving the controversy.

There were no further important developments in the dispute until November 6, 1951. At that time, the Brotherhood

of Locomotive Firemen and Enginemen announced a strike to become effective at 3:00 P. M., November 8, on the lines of the following carriers: the Baltimore and Ohio Railroad Company; the Chicago and Northwestern Railway Company; the Louisville and Nashville Railroad Company; and the Terminal Railroad Association of St. Louis. On the same day that the strike was announced, President Truman created an Emergency Board to investigate and submit a report on the dispute. This Board began hearings on November 27, and submitted its report to the President on January 25, 1952. However, the Brotherhood of Locomotive Firemen and Enginemen refused to participate in the hearings and rejected the Board's recommendations as soon as they became public.²⁵ The Board's findings were never utilized by either party in subsequent negotiations.

Late in January, 1952, the Brotherhood of Locomotive Engineers circulated a strike ballot among the employees whom it represented, but the result of this strike ballot was not publicly announced. The Order of Railway Conductors and the Brotherhood of Locomotive Firemen and Enginemen did not conduct a strike ballot, but on March 9, 1952, all three organizations withdrew from the service of the New York Central Railroad Company and the Terminal Railroad Association of St.

²⁵Report to the President by the Emergency Board Created November 6, 1951, Pursuant to Section 10 of the Railway Labor Act, January 25, 1952 (Washington: Government Printing Office, 1952), p. 1.

Louis. On the third day of the strike, the Government obtained a temporary restraining order from the Federal District Court in Cleveland, Ohio, and the three organizations ended the strike on the same day in compliance with the court's order. A preliminary injunction was later issued by the same court to prevent further strike action.²⁶ In the meantime, the organizations filed suit in the same court charging that the existing government seizure and operation of the railroads was illegal.

During April, 1952, the three organizations resumed negotiations with the carriers under the auspices of the White House, and John R. Steelman, the President's personal representative, acted as mediator. Mr. Steelman was successful in his efforts to resolve the dispute, and on May 23, 1952, formal agreements were signed by representatives of the carriers and the three organizations. The terms of the final settlement differed very little from the provisions of the "memorandum agreement" of 1950, and the settlement achieved by the Brotherhood of Railroad Trainmen in May, 1951. The important rule issues were settled in the same manner, the agreement contained a "cost-of-living" adjustment factor, and a moratorium was placed on all rule and wage changes for the

²⁶ Eighteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1952 (Washington: Government Printing Office, 1953), pp. 7-8.

same period specified in the trainmen's agreement. Employees in road service received a basic wage increase of 12-1/2 cents per hour plus a 10 cents per hour "cost-of-living" increase, while yard service employees received a basic wage increase of 27 cents per hour and a 10 cent "cost-of-living" adjustment.²⁷ These wage increases included the increase granted by the Army on February 8, 1951. On May 25, 1952, two days after the agreement was signed, the railroads were returned to private management.

Summary

In its Sixteenth Annual Report, the National Mediation Board made the following statement:²⁸

It has been unfortunate that the close cohesion between the powerful brotherhoods of the operating groups has been affected by differences arising between them as to representation, mileage limitations, promotional rights, and similar differences which are in the realm of jurisdictional disputes. The Board feels that the former cooperative spirit by and between the operating brotherhoods contributed materially to the minimizing of such disputes which have been so prevalent in recent years.

The Board is further disturbed by the apparent reluctance of both the carriers and the organizations, in national cases, to conduct thorough collective bargaining; each side apparently feeling that the responsibility for the disposition of all

²⁷For complete details of the final settlement see: Traffic World, Vol. 89 (May 24, 1952), p. 19.

²⁸Sixteenth Annual Report of the National Mediation Board Including the Report of the National Railroad Adjustment Board for the Fiscal Year Ended June 30, 1950 (Washington: Government Printing Office, 1950), p. 7.

such cases should be attached to some other source. If the Railway Labor Act is to survive, there must be an ever-present consciousness of and the desire of the parties to make it work in the manner which they so strongly advocated when it was placed on the Federal statute books.

The efforts of the operating organizations to secure favorable wage, hour, and rule adjustments, which began in 1949 and were not concluded in all cases until 1952, offer an excellent illustration of the difficulties to which the National Mediation Board had reference. For the most part, these demands were made independently, and frequently, even though two or more organizations may have joined forces for the moment, a single organization would undertake independent action until a final settlement of the issues was achieved.

These events also illustrate the continued use of certain patterns of action which were not clearly evident in national disputes before 1952. Under the continuation of favorable economic conditions in the economy as a whole, the organizations refused to consider the use of arbitration machinery, except for one instance in which two rule revisions were submitted to arbitration. When emergency boards were appointed, the recommendations of such boards were invariably rejected. Ultimately these controversies were resolved under the auspices of the White House, or, as in one case, through the continued efforts of the National Mediation Board. In an effort to secure uniform recommendations on these issues as they developed, President Truman appointed the same men to three of the

Emergency Boards which considered these demands. In addition, even though the recommendations of the emergency boards were rejected initially by the brotherhoods, the final settlements reached in every case corresponded very closely with the recommendations of these boards and were almost identical to one another in every respect. In no other way could very serious repercussions throughout the railroad industry have been avoided.

The organizations recognized the fact that the procedures of the Railway Labor Act were being utilized in such a manner as to insure uniform treatment for each of the brotherhoods and, in response, they elected to withhold a presentation of their positions from two of the emergency boards which were appointed. It was apparent, throughout the course of events, that each of the operating organizations, at least at times, was determined to achieve a more favorable settlement than that accorded the other organizations. The reasons for such action on the part of the brotherhoods, and the difficulty of coping with such developments under the Railway Labor Act, will be discussed in the concluding chapter.

CHAPTER X

CONCLUSIONS AND RECOMMENDATIONS

In previous chapters this dissertation has examined the historical development of the Railway Labor Act, the interpretation given this legislation by the courts, the practices and procedures of the administrative agencies created by the statute, and the difficulties encountered in resolving a number of recent major disputes in the railroad industry. It is the purpose of the present chapter to discuss the effectiveness of the Railway Labor Act, to consider its value in settling present railway labor problems, and to present certain recommendations which, it is believed, might improve existing legislation.

The present law is the result of many years of experience and effort on the part of Congress to develop a workable and practical statute. For almost fifteen years after the Railway Labor Act went into effect there were no work stoppages of any importance in the entire railroad industry. Both management and labor appeared to be satisfied with this legislation, and there was substantial cooperation between the parties to insure its continued success. For these reasons many authorities cited the Railway Labor Act as an outstanding example of labor legislation and it was frequently suggested as a model for legislation in other fields of industry.

In recent years, however, the procedures of the Railway Labor Act have been completely exhausted in attempts to resolve certain labor-management controversies in the industry. Indeed, on several occasions the federal government has been forced to seize and operate the nation's railroads for varying periods of time in order to insure continued rail service. The Railway Labor Act is no longer working in the manner envisioned by Congress and it is functioning much less satisfactorily than it did in earlier years. What has gone wrong?

The Railway Labor Act is not a perfect piece of legislation and it may require revision and change, but after all it is the same basic law that once served the industry so well. It has existed in some form for a good many years and it has been revised frequently in the light of new experiences. The present law provides elaborate and detailed procedures which, if followed, are capable of resolving equitably any controversy which might develop. The failure of labor and management to achieve peaceful solutions of their problems in recent years has been due to other factors rather than to inadequacies of the Railway Labor Act.

Factors in the Recent Unsuccessful Operation of the Railway Labor Act

Several factors have probably exercised some influence on the operation of the Railway Labor Act in recent years, but

attention may be largely concentrated on two items--the drive for greater power, influence, and prestige among the operating organizations of railroad labor and changes in the general economic and political situation within which the Railway Labor Act has had to operate.

The objectives of greater power, influence, and prestige have not been sought by the operating organizations of employees as a group, but rather by individual unions. In certain recent disputes, one or more of these organizations have presented demands to the carriers which, if granted, would have given the organization or organizations concerned an enviable position within the railroad industry. In turn, the organizations could have utilized these gains to attract members from other union groups and to obtain new jobs for their own members, thus enhancing their own power, influence, and prestige.

From the dates of their organization through 1934, the five railroad operating organizations were among the most powerful and influential unions in this country. After 1934, the non-operating railroad employees were successful in forming stable unions, and the strength and power of these unions has steadily increased in recent years. In 1948, the non-operating organizations were able to obtain a forty-hour week for the employees whom they represented. This concession was termed by the National Mediation Board as the greatest advance

achieved by railroad labor since the establishment of the eight-hour day during World War I. The operating brotherhoods did not achieve a forty-hour week for all of their members until 1952. Thus, the operating organizations have sometimes had to run hard just to hold their place among labor unions in the railroad industry.

The position that a major source of difficulty in peacefully resolving labor disputes in the railroad industry is found in differences arising between the operating organizations as to representation, mileage limitations, promotional rights, and other matters which are jurisdictional in nature is substantiated by the history of recent disputes. The records of the National Railroad Adjustment Board constitute an excellent illustration of the unrest and dissatisfaction among the employees within the operating organizations. Since 1934, the First Division, which is charged with deciding disputes involving employee grievances and the application or interpretation of agreements arising from the operating organizations, has received a total of 29,676 disputes. During this same period, all four divisions have received 38,360 cases; yet the Second, Third, and Fourth Divisions decide those disputes arising from approximately five times as many railroad employees as are under the jurisdiction of the First Division. In other words, about three-fourths of all of the disputes coming before the National Railroad Adjustment Board

originate among approximately one-fifth of the railroad employees served by that Board.

Another illustration of the "jurisdictional" difficulties within the operating organizations is the attitude of these groups toward the findings and recommendations of the Emergency Boards created to consider certain controversies of national interest. When the Railway Labor Act was enacted, both management and labor announced that it was not their intention to utilize the procedures of Emergency Boards, but that, if it were necessary to create such Boards, their findings and conclusions would be respected and accepted. This cooperative attitude prevailed until World War II. Since 1942, the operating organizations have not accepted the recommendations of a single Emergency Board in any dispute of national importance.

In many of these disputes, the organizations concerned have demanded working rule revisions which would have given them directly, or indirectly, a more favorable working agreement than that enjoyed by other operating groups. In an effort to accord the contesting organizations equal treatment, Emergency Boards have rendered identical recommendations or have coordinated their findings with rulings made by Boards of Arbitration. For example, in the wage, hour, and rule movement of 1949 and 1950, the same men were appointed to three separate Emergency Boards to consider the demands of

various operating groups, and these Boards made substantially the same findings in an effort to reduce "jurisdictional" friction. In turn, the operating organizations apparently have adopted the practice of refusing to accept Emergency Board recommendations in the hope of obtaining further favorable concessions, and the findings of these Emergency Boards have been utilized merely as a basis for further negotiations.

Another indication of the conflict within the operating organizations is the fact that these groups no longer plan and serve unified demands upon the carriers. Beginning as early as 1910, these unions customarily united in presenting demands to the carriers for higher wages, shorter hours, and improved working rules. After 1940, these tactics changed. In the so-called "Diesel locomotive case" of 1943, the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen appeared before an Emergency Board in direct opposition to one another, each desiring exclusive jurisdiction over certain jobs in manning multiple-unit Diesel locomotives.¹

In the same year, all five organizations began a joint movement for wage increases and rule revisions, but the Brotherhood of Locomotive Engineers and the Brotherhood of

¹In 1949, the same demands were made by the two organizations before separate Emergency Boards.

Railroad Trainmen broke away from the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, and the Switchmen's Union of North America and accepted arbitration of the issues in the dispute. The latter unions reached almost the same terms of settlement through negotiations at a later date. During the wage and rule movements of 1945 and 1946, the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen submitted their demands to the carriers and the issues involved were eventually resolved entirely independent of the demands and the ultimate settlement achieved by the other three organizations, although the final agreements were practically the same.

All five organizations began a joint movement for rule and wage revisions in 1948, but in reaching a final agreement with the carriers, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen divorced themselves from the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America. During 1949 and 1950, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen began a joint wage and rule movement, while the other operating organizations made independent demands upon the carriers. Yet the Switchmen's Union of North America and the Brotherhood of Railroad Trainmen reached independent settlements, and the remaining organizations combined their forces to eventually

reach virtually identical agreements.

All of these disputes illustrate the rivalry that has developed among the operating brotherhoods. If there has appeared to be an opportunity to obtain a more favorable settlement than that attained by another organizations, either by prolonging the dispute or by reaching an early agreement, the brotherhoods have not hesitated, as a rule, to abandon their unified position.

There are several reasons for the strong rivalry that has developed among the operating groups. The impact of technological developments has been felt most sharply by the operating brotherhoods. As yard and track facilities have been improved, as train motive power has become more powerful and more flexible, and as the Diesel-electric locomotive has replaced the steam locomotive, employment and promotional opportunities have decreased steadily for the operating groups.

In almost every dispute of national importance, the brotherhoods have emphasized the effect of technological advances upon employment and they have sought to protect the existing job opportunities for their own members through favorable rule revisions. As various classes of work have been eliminated or consolidated, each of the brotherhoods has sought to obtain jurisdiction over any new or existing work available, where such opportunities existed. As a result of these efforts to control job opportunities, cross-membership

has developed among the five operating organizations.

Accurate data as to the full extent of cross-membership is not available, but, in some of the operating brotherhoods, a sizeable percentage of the membership consists of other classes and crafts. The Brotherhood of Locomotive Engineers represents engineers and motormen primarily, but firemen belong to this organization on some systems. The Brotherhood of Locomotive Firemen and Enginemen represents firemen, hostlers, and helpers, but engineers are members in some cases. The Order of Railway Conductors represents brakemen, flagmen, baggagemen, switchtenders, and yardmasters, as well as conductors, while 20 per cent of all railroad conductors are found in the Brotherhood of Railroad Trainmen, in addition to the basic membership of trainmen, switchmen, and a small number of yardmasters. The Switchmen's Union of North America represents both trainmen and switchmen, as well as a small number of yard foremen and conductors.²

It is apparent that favorable working rule revisions obtained by some of these organizations could easily prove to be to the disadvantage of other organizations and would enable the favored group to attract members from other organizations. The emphasis placed by the operating organizations and

²For a brief discussion of cross-membership see: Report to the President by the Emergency Board Created November 6, 1951, Pursuant to Section 10 of the Railway Labor Act, January 25, 1952 (Washington: Government Printing Office, 1952), p. 3.

by the carriers on working rule revisions, and the efforts of the various emergency boards concerned to avoid the jurisdictional conflicts which would have resulted if some of the demands had been granted, explain at least in part the recent prolonged disputes in the railroad industry.

The solution to the problems of jurisdiction which have developed among the operating organizations is not apparent. It is to be hoped that the brotherhoods will heed the warnings of the National Mediation Board and cooperate among themselves, and that, with the cooperation of the carriers, the Railway Labor Act can once more become a basis for stable and progressive labor-management relations in the railroad industry. If such a solution cannot be achieved, some form of compulsory arbitration may prove to be necessary in those disputes which are jurisdictional in nature.

The other factor which helps to account for the relative ineffectiveness of the Railway Labor Act and its agencies and procedures in recent years is the change which has occurred in the general economic and political situation in which the Act has had to operate. Settlements reached under the Act are bound to be compromises. The unions will ask for a wage increase of 30 cents an hour and the carriers will offer 10 cents. The labor organizations cannot expect to get all they ask in the initial direct negotiations with the carriers. A wage increase resulting from mediation, or one awarded by a

board of arbitration, is almost certain to hit in between the increase demanded and that offered. The same thing will be true of a settlement proposed by an emergency board. From the point of view of the labor organizations, the desirability of accepting such a compromise will be influenced by the general economic and political situation.

In the period from 1926 through 1941, many of the years were years of moderate to extreme depression. In such years the volume of railroad traffic was light, railroad earnings (if any existed) were extremely small, and many of the railroads were in a desperate financial plight. Union officials could not refer in glowing terms to the carriers' ability to pay and were not anxious to have railway wages tied to a low or declining cost of living.

In the early years of the period, the railroad unions reigned in almost solitary splendor, for the workers of most of the other great industries of the country were not yet effectively organized. There was a great burst of union organization starting in 1935, but the new unions were not yet so great and powerful as they later became. The terms which the unions in other industries were able to secure from the employers were not such as to arouse the jealousy of the railway labor organizations. The attitude of the federal government toward the labor unions was not especially encouraging in the early years of the period. Later the government was

active in promoting the growth of labor organizations, but there was no reason to expect the President to intervene directly in labor disputes.

Under these circumstances, compromise settlements of the type to be expected under the Railway Labor Act seemed relatively desirable to the railway labor organizations. They, and the carriers as well, tended to give the Act, and its agencies and procedures, their support and cooperation. The Act therefore appeared to work well, there were no work stoppages of importance, and the labor situation in the railroad industry was relatively peaceful.

From 1942 to 1946, the general situation was very different. In these war years, there was a tremendous volume of traffic for the railroads to carry. Railroad earnings boomed and brought back memories of "the good old days." There was little question about the ability of the railways to pay increased wages. In the wartime emergency, the continued operation of the railroads was essential and work stoppages could not be tolerated. This factor, considered by itself, tended to give the railway labor organizations an advantage.

Strong labor unions had developed in many major industries which had formerly been wholly or largely unorganized. The general attitude of the federal government toward the labor unions was highly favorable. However, the labor unions in general, and those in the railroad industry, were handicapped

by the wage stabilization program in their efforts to obtain the wage increases to which they felt entitled. Thus the settlements obtained by unions in other industries still gave the railway labor organizations little reason to be envious. The tendency of the President to intervene in railway labor disputes first became important in this period.

In the postwar period, business continued generally prosperous. Railroad traffic, while not always at wartime levels, was still relatively heavy and railroad earnings held up fairly well. Considerable inflation of prices occurred and the workers' cost of living increased sharply. Since the railroad workers had received only moderate wage increases during the war, they were in a good position to ask for higher wages once the wage controls had been removed in the postwar period.

Labor unions in other industries were strong and were able to secure round after round of wage increases and improvements in working conditions. Intense competition developed among individual unions and their leaders to see who could secure the largest concessions from the employers and thus build up their own power, prestige, and influence. The attitude of the federal government toward labor unions remained very favorable, and the railway labor organizations could hope that the government would intervene in serious unsettled labor disputes.

Under the conditions that prevailed in the war and postwar periods, settlements and awards of the type that could be obtained under the Railway Labor Act did not seem very desirable to the railway labor organizations. Accordingly these organizations were not likely to reach a settlement with management through initial direct negotiation or mediation and in most cases refused arbitration. The recommendations of emergency boards were also refused, at least when first offered, because the labor organizations thought that better terms could be obtained by prolonged negotiations with the carriers or through intervention of the President when a strike had begun or was imminent.

Thus, the Railway Labor Act came to be rather ineffective in settling labor-management controversies even though the Act itself, and its agencies and procedures, had not changed. The general economic and political situation would almost certainly have influenced the effectiveness with which the Act could operate even if the railroad labor organizations had continued to cooperate with each other instead of engaging in inter-union competition.

Suggested Revisions of the Railway Labor Act

Insofar as the operation of the Railway Labor Act itself is concerned, certain changes would appear to be desirable. Since the National Railroad Adjustment Board and the

National Mediation Board are the two administrative agencies established by this statute, the suggested changes will be discussed in connection with the activities and duties of these agencies.

The National Railroad Adjustment Board is charged with deciding grievances that arise from the ranks of the employees and is concerned with the interpretation or application of existing working agreements. In carrying out its functions in recent years, it has encountered a great deal of difficulty, chiefly due to the large number of cases which have been submitted to certain divisions. It would appear that a substantial number of these cases have not been the subject of real collective bargaining on the individual carrier properties and that they have been submitted to the Adjustment Board before every effort has been made to adjust the differences between the parties. The statute simply states that matters coming before the Board must be "handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." Such disputes may then be submitted to the Board.

It is believed that the law should be amended to require a complete explanation from both the carrier and the labor organization at each level of negotiation as to the reasons for the inability of the parties to settle the dispute. If, in the judgement of the Adjustment Board, every

possibility of resolving the controversy had not been exhausted, the Board might return the dispute to the parties for further handling. Such an amendment, it is hoped, would place the responsibility for negotiating a settlement of the controversy on the parties at the level where the dispute originated.

At the present time, the law does not place a limit on the time within which a retroactive claim for back payment of wages or similar grievances may be filed. This has resulted in disputes being submitted to the Board even though the basis of the dispute originated several years in the past, and, in some cases, the carriers have made payments for claims extending over a period of five or six years. This may be unfair to the carrier if the claim is based on a new interpretation of an existing rule, or if a working agreement is given an interpretation which disregards previous local practices.

However, the carrier may have deliberately violated the terms of a working agreement in an effort to save money at the expense of the employee. In such a case, the employee should not be barred from filing a claim for a breach of the working agreement even though the violation occurred several years in the past. It is suggested that the law might be amended to bar claims submitted for an alleged violation of a working agreement unless such claims are filed within one

year or a reasonably short period of time. The Adjustment Board might be given the authority to waive the time limit if the claimant could show that the contract violation was deliberate.

Another difficulty which confronts the Adjustment Board is the fact that the rules of procedure before the various divisions of the Board are not uniform. The work of the Board would be expedited appreciably if the several divisions adopted similar rules of procedure, thus standardizing the process to be followed by the parties regardless of the division to which the claim is submitted. In addition, the divisions do not write reasoned opinions on the cases which are decided. It is customary merely to state the facts of the dispute and render an award. If the several divisions were to begin the practice of writing opinions in which the merits of the case were discussed and the reasoning which led to the decision was explained, these decisions could serve as valuable precedents to be followed in similar cases in the future. At the present time, each case is decided individually, and previous cases, which may have been very similar, are of little or no value in aiding the division or a referee to arrive at a decision. However, it is doubtful that these problems can be solved by legislative action. These difficulties cannot be eliminated without the mutual understanding and cooperation of the carrier and labor members who constitute the Board and determine its policies.

A frequent source of controversy between the carrier and labor members of the Board has been the attitude of the labor members toward the appearance of a third party in a proceeding and the submission of a grievance by an individual employee. The carriers maintain that third parties who might be adversely affected by the decisions of the Board should be authorized to appear and present their position in a dispute and that individual employees should be allowed to submit grievances to the Board. On the other hand, the labor members of the Board have consistently argued that third parties cannot be made a party to a dispute and that the grievances of an individual employee must be submitted through duly authorized union representatives.

It is doubtful that the position of the labor members of the Board is justifiable and it is believed that the Act should be amended so as to authorize specifically the appearance of third parties, who have a direct interest in a dispute, before the Board. The Act provides that the parties to a dispute "may be heard either in person, by counsel, or by other representative" and the refusal of the labor members to consider the grievances of individual employees might be contested in the courts. However, the enforcement of this section by court action is not a desirable solution, even though the present attitude of the labor members of the Board leaves no other alternative if an individual employee is to retain

his privileges under the statute.

In the event that a division of the National Railroad Adjustment Board cannot reach a decision on a dispute or is unable to obtain a majority vote of its members, the division must select a referee to counsel with the division and, if necessary, render an award. If the division cannot agree upon a referee, it is the responsibility of the National Mediation Board to name a referee to sit with the division and make an award. In the past, the National Mediation Board has been forced to appoint many of these neutral referees and the Board has found it increasingly difficult to appoint new referees who are qualified by skill and experience to fulfill this task.

It is suggested that the Act should be amended to provide for the creation of a "National Railroad Adjustment Board Panel" to consist of three men, appointed by the President with the advice of the National Mediation Board, who would serve as a permanent group of referees with the Adjustment Board. These men should fulfill all of the requirements for an arbitrator under the law and might serve for staggered terms of office, with the senior man acting as chairman of the group. In the event of a division becoming deadlocked in deciding a dispute, the entire panel or a single member might sit with the division and render an award. As these men gained additional experience and insight into the problems of the Adjustment Board, their recommendations and awards should

establish precedents which would materially reduce the number of deadlocked cases now being decided by inexperienced referees.

The implementation of the Railway Labor Act by the National Mediation Board leaves little to be desired. This Board has established an outstanding record during the years since 1934 and has won the complete confidence of both labor and management. The number of disputes resolved by this agency through mediation each year constitute an admirable record. However, the Board has been somewhat handicapped in that it does not have explicit authority to intervene in jurisdictional disputes. The Mediation Board is authorized to proffer its services in "any labor emergency" but it is believed that the Act should be amended to instruct the Mediation Board to intervene in those jurisdictional disputes among employee groups which threaten to create an emergency. The mediatory experience of the Board should be very helpful in resolving those inter-union conflicts which have been prevalent.

A final suggested revision of the Act is in relation to the findings and recommendations of emergency boards. These rulings are not binding on the parties, and, as has been pointed out, it has become the custom of the labor groups to utilize the recommendations of such Boards for further negotiations. This attitude threatens the basic procedures of the Railway Labor Act, for the creation of an emergency board should be

considered only as a last resort and its recommendations are supposed to impose a moral obligation of acceptance upon the parties.

It is suggested that the Act should be amended to provide that the findings of an emergency board would become effective as a final settlement in sixty days, unless the parties reached a mutually satisfactory agreement on other terms within that period. This proposal smacks of compulsory arbitration, but in reality the parties would not be bound by the recommendations of the Board if other terms of settlement were agreed upon. This suggested revision would accomplish two objectives. It would make the findings of an emergency board the final step in resolving a controversy under the Railway Labor Act, and, most important, it would place the responsibility of resolving a dispute squarely upon the parties concerned.

However, even though these suggested changes in the Railway Labor Act may have some merit, they relate only to procedures and agencies. Labor legislation cannot provide industrial peace without the mutual confidence and combined efforts of both labor and management. If, under the influence of economic or other conditions, the railroad labor organizations decide that their best interests will not be served by accepting the settlements which are forthcoming under the Railway Labor Act, it would be most difficult to force them to agree to the proposed terms and work under them.

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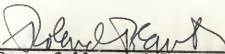
Biography

James William Bennett, Jr. was born on July 20, 1920, in Asheville, North Carolina. He attended the public schools of the City of Asheville, graduating from Lee H. Edwards High School in 1937. Four years later he graduated from Maryville College, Maryville, Tennessee, receiving a Bachelor of Arts degree. After graduation he was employed by the Aluminum Company of America, Alcoa, Tennessee, until he entered the United States Army in September, 1942. He served in the armed forces until October, 1945, and following release from the service, he was employed by Tennessee Eastman Corporation, Kingsport, Tennessee. In July, 1949, he resigned from Tennessee Eastman Corporation to begin graduate work at the University of Tennessee.

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This dissertation was prepared under the direction of the chairman of the candidate's supervisory committee and has been approved by all members of the committee. It was submitted to the Dean of the College of Business Administration and to the Graduate Council and was approved as partial fulfillment of the requirements for the degree of Doctor of Philosophy.

January 29, 1955


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